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	1	2	3	4	5	6	7	8	9	10	11 (A)	12	13	14	15
L*	39.12	65.43	49.87	44.26	55.56	70.82	63.51	39.92	52.24	97.06	92.02	87.34	82.14	72.06	62.15
a*	13.24	18.11	-4.34	-13.80	9.82	-33.43	34.26	11.81	48.55	-0.40	-0.60	-0.75	-1.06	-1.19	-1.07
b*	15.07	18.72	-22.29	22.85	-24.49	-0.35	59.60	-46.07	18.51	1.13	0.23	0.21	0.43	0.28	0.19

	16 (M)	17	18 (B)	19	20	21	22	23	24	25	26	27	28	29	30
L*	49.25	38.62	28.86	16.19	8.29	3.44	31.41	72.46	72.95	29.37	54.91	43.96	82.74	52.79	50.87
a*	-0.16	-0.18	0.54	-0.05	-0.61	-0.23	20.98	-24.45	16.83	13.06	-38.91	52.00	3.45	50.88	-27.17
b*	0.01	-0.04	0.60	0.73	0.19	0.49	-19.43	55.93	68.80	-49.49	30.77	30.01	81.29	-12.72	-29.46

D50 Illuminant, 2 degree observer

Density → 0.04 0.09 0.15 0.22 0.36 0.51 | 0.75 0.98 1.24 1.67 2.04 2.42

Golden Thread

Colors by Munsell Color Services Lab

Dan Williams

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LIBRARY COMPANY

OF

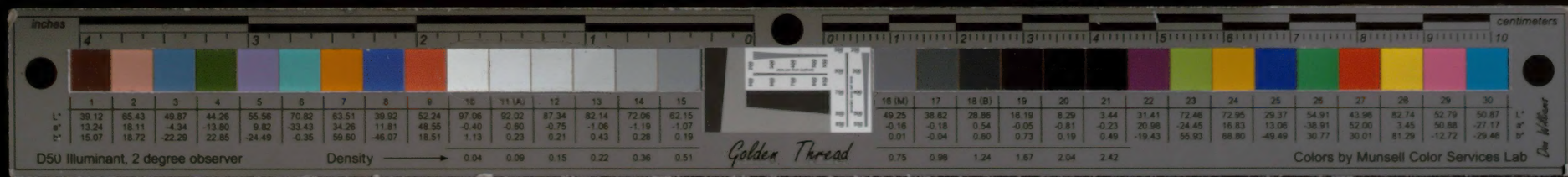
PHILADELPHIA.

RIDGWAY BRANCH.

PRESENTED BY

Miss M. C. Biddle

COMMUNITER BONA PROFUNDERE DEORUM EST.



	1	2	3	4	5	6	7	8	9	10	11 (A)	12	13	14	15
L*	39.12	65.43	49.87	44.26	55.56	70.82	63.51	39.92	52.24	97.06	92.02	87.34	82.14	72.06	62.15
a*	13.24	18.11	-4.34	-13.80	9.82	-33.43	34.26	11.81	48.55	-0.40	-0.60	-0.75	-1.06	-1.19	-1.07
b*	15.07	18.72	-22.29	22.85	-24.49	-0.35	59.60	-46.07	18.51	1.13	0.23	0.21	0.43	0.28	0.19
Density										0.04	0.09	0.15	0.22	0.36	0.51

	16 (M)	17	18 (B)	19	20	21	22	23	24	25	26	27	28	29	30
L*	49.25	38.62	28.86	16.19	8.29	3.44	31.41	72.46	72.95	29.37	54.91	43.96	82.74	52.79	50.87
a*	-0.16	-0.18	0.54	-0.05	-0.81	-0.23	20.98	-24.45	16.83	13.06	-38.91	52.00	3.45	50.88	-27.17
b*	0.01	-0.04	0.60	0.73	0.19	0.49	-19.43	55.93	68.80	-49.49	30.77	30.01	81.29	-12.72	-29.46
Density	0.75	0.98	1.24	1.67	2.04	2.42									

L43
63146

PAWSON & NICHOLSON,
BOOKBINDERS,
139 SOUTH SEVENTH ST.
PHILADELPHIA.

My dear Mr Abbot

If you can make use of this book, please keep it

Sincerely yours

Meta C. Biddle

Monday

LA3
63146

DAWSON & NICHOLSON,
BOOKBINDERS,
129 SOUTH SEVENTH ST.
PHILADELPHIA.

Golden Thread
Colors by Munsell Color Services Lab
D50 Illuminant, 2 degree observer
Density

LA3
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PAWSON & NICHOLSON,
BOOKBINDERS,
139 SOUTH SEVENTH ST.
PHILADELPHIA.

Golden Thread
D5U Illuminant, 2 degree observer
Density
Colors by Munsell Color Services Lab

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PAWSON & NICH
BOOKBINDERS,
139 SOUTH SEVENTH ST.
PHILADELPHIA.

Golden Thread
D50 Illuminant, 2 degree observer
Density
Colors by Munsell Color Services Lab

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D50 Illuminant, 2 degree observer
Density
Golden Thread
Colors by Munsell Color Services Lab

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Colors by Munsell Color Services Lab

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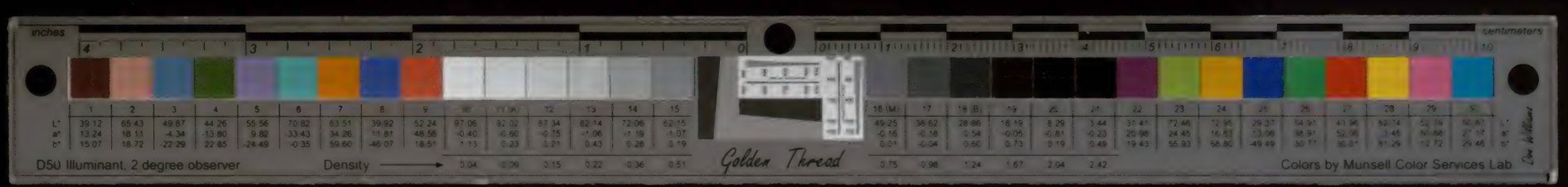
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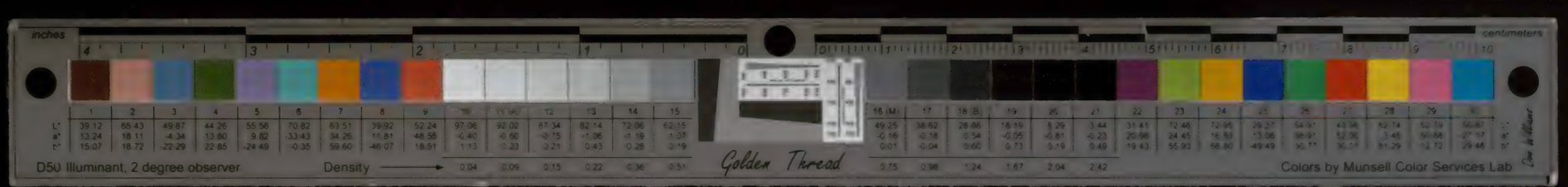
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Golden Thread
Colors by Munsell Color Services Lab

PROVISIONS

OF THE

LAST WILL AND TESTAMENT

OF

DR. JAMES RUSH,

RELATING TO

THE LIBRARY COMPANY OF PHILADELPHIA.

THE PRIVATE BEQUESTS ARE OMITTED.

PHILADELPHIA:
COLLINS, PRINTER, 705 JAYNE STREET.
1869.

LK
63

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COLLINS, PRINTER, 705 JAYNE STREET.
1869.

LK
63

WILL OF JAMES RUSH, M. D.

Be it remembered, That I, JAMES RUSH, of the city of Philadelphia, M. D., do make this my last will and testament, hereby revoking all others by me heretofore made, in manner following—that is to say:—

I will and direct that all my just debts, which will be found very few in number and insignificant in amount, shall be paid by my executor as soon as possible.

It is my intention, by a codicil or codicils to this my will, to give considerable legacies, annuities, and devises to different persons, but as I desire to take some time for reflection on this subject, and as I have made up my mind as to the disposition of my residuary estate after the payment of these legacies, annuities, and devises; now, therefore, I do hereby give, bequeath, and devise my whole estate, real and personal, legal and equitable, whatsoever and wheresoever the same may be, unto my brother-in-law, HENRY J. WILLIAMS, of the city of Philadelphia, his heirs and assigns, to be held by him for and upon the following trusts and purposes, and for

and upon no other use, trust, or purpose whatever—that is to say:—

In trust, after paying, providing for, and complying with all legacies, annuities, gifts, bequests, and devises, declarations, and intentions which may be contained and expressed in any codicil or codicils to this, my last will and testament, which I may hereafter make (to be signed by me at the end thereof), whether the same be formally drawn or not; to have and to hold the whole residue and remainder of my estate, real and personal, whatsoever and wheresoever the same may be, for the following uses and purposes, viz:—

In trust, to select and purchase a lot of ground not less than one hundred and fifty feet square, situate between Fourth and Fifteenth and Spruce and Race Streets, in the city of Philadelphia, and thereon to erect a fire-proof building sufficiently large to accommodate and contain all the books of the Library Company of Philadelphia (whose library is now at the corner of Fifth and Library Street), and to provide for its future extension according to plans, directions, and specifications which I shall hereafter make or give; but if I should not make or leave any such plans, directions, or specifications, then to erect the same according to his best judgment and to the views which I have expressed to him. It is my wish that this building should be exceedingly substantial, completely fire-proof, without any large, lofty, or merely ornamental halls or lecture-rooms; the whole interior to be divided in such a way as to contain the

greatest number of books, to be well lighted, and so arranged as to be of easy and convenient access.

AND UPON THIS FURTHER TRUST, so soon as this building is completed and ready for occupation, then in trust to convey the same, with the lot of ground whereon it is erected, unto "The Library Company of Philadelphia" aforesaid, and their successors, for the uses and purposes of their library, and for no other use or purpose whatever.

Provided, however, that before any such conveyance shall be made to the said Library Company, they shall, either by an alteration in their charter, or in some other way satisfactory to my executor, bind themselves and their successors to conform to and comply with the following express conditions, and any others I may hereafter impose, under which they are to hold the said property and all other bequests and devises herein or hereafter given to them:—

First. That the said Library Company shall not cause, allow, or permit any lectures, public orations, or oral addresses or exhibitions of any kind to be delivered, given, or to take place on the said lot of ground, or in the said building; nor shall they cause, allow, or permit the formation of any museum, cabinet, gallery, or collection of natural history, statuary, sculpture, portraits, or paintings thereon or therein, nor shall they use, apply, or expend any funds, derived from me, or under my will or any codicil thereto, in procuring or defraying the expenses of any such lectures or exhibitions, public ora-

tions, or oral addresses, or in the establishment or support of or for additions to any such museum, cabinet, gallery or collection, painting, or portraits (and especially that of the testator) on the said lot and in the said building or elsewhere.

These are objects foreign to and inconsistent with the legitimate purposes of a public library, and it is only for the preservation, extension, and free and convenient use of such a library, without any ambitious or pretentious display, that it is desired to make provision.

Second. That all the accounts of the receipts and expenditures from the estates aforesaid, real and personal, shall be kept separate and distinct from all other accounts of the said Library Company, and shall all be headed and kept as the accounts of "THE RIDGWAY BRANCH OF THE LIBRARY COMPANY OF PHILADELPHIA," so that it may be always easily and certainly ascertained whether the application of those estates and the income derived therefrom has been in accordance with the provisions of this my will.

And I further will, direct, bequeath, and devise that whenever the said building shall have been completed and transferred to the said Library Company, and the preliminary conditions complied with, then my said executor shall assign, transfer, and convey, by one or more deeds and instruments, all the rest and remainder of my residuary estate not laid out and expended in the purchase of the lot and the construction of the building aforesaid, and in the legal and customary charges and

expenses, unto the said Library Company, to be held and used by them and their successors for the following uses, trusts, and purposes:—

First. In trust to keep the whole of the real estate granted and conveyed to them by my executor, in good order and repair, and to make from time to time such additions to the library building as may be found necessary for the extension and preservation and convenient use of the said library and all additions thereto.

Second. In trust, after paying all necessary taxes, charges, and expenses incident to the said property, to set aside annually ten per cent. of the clear net income, to form a contingent fund, to be invested, and the interest added to the principal, which fund, or so much thereof as may be required, shall be applied:—

First. To build upon, improve, alter, and renew any lands and tenements hereby devised to the said Company, so as to increase the income derived therefrom.

Second. To make good and replace any losses from the failure of any investments made of or from the property hereby bequeathed for the said Company; and,

Third. Whenever the said contingent fund shall amount to $30,000, then to pay over and apply the whole surplus beyond the said $30,000 for the general purposes to which the income of this residuary estate is herein directed to be applied.

Third. In trust to pay all necessary salaries of the librarian and his assistants, and the expenses of binding and preserving the books of the whole library, making

cheap catalogues, and all charges incident to its care and management. The said library is to be kept open from nine o'clock A. M. until at or near sunset, except on Sundays and holidays.

Fourth. And in trust, after complying with and fulfilling the previous trusts, and purposes hereinbefore contained and expressed, to apply the remainder or surplus of the said net annual income, or so much thereof as may be necessary or desirable, to the increase and extension of the said library.

But I direct that no portion of my real estate aforesaid shall be sold by the Library Company for ten years after my death, nor then, unless it be absolutely necessary for the purposes of this trust, even if additional income should be derived therefrom; and in no case, unless the said sales are sanctioned by a decree of the Orphans' Court or a court of equity, which shall decide such sales are not in contravention of the spirit of this my will.

And in order to enable my executor to carry out the directions of this my will, I hereby authorize and empower him to grant, bargain, and sell any part or parts of my real estate, at public or private sale, for any price or consideration, with any restrictions, reservations, covenants, or conditions, for cash or on credit, taking security on the premises for the balance of the purchase moneys; or to let on ground rent, mortgage, exchange, or make partition of the same, or any part or parts thereof; and to seal, execute, and deliver all deeds, conveyances, mortgages, assurances, or other instruments,

necessary for the purposes aforesaid, without any obligation on the purchaser or purchasers to see to or be responsible for the application of the purchase money or other consideration, or for the propriety of the exercise of this power.

And I further will, devise, and direct that all investments if any should be made by my executor, and all those which may at any time hereafter be made by the said Library Company from the principal or income of my said estate shall be in ground rents or other real estate in the State of Pennsylvania, or in bonds and mortgages upon property within the said State, or in loans of the said State, or of the United States; and lastly, I hereby appoint my brother-in-law, Henry J. Williams, of the city of Philadelphia, executor of this my last will and testament.

In witness whereof I have hereunto set my hand and seal this 26th day of February, A. D. eighteen hundred and sixty, 1860.

(Signed) JAMES RUSH.

Witnesses—Wm. F. Judson, J. S. Farmer,
R. S. Hunter, J. S. Farmer.

October 16, '65.

FIRST CODICIL.

Be it remembered, That I, JAMES RUSH, of the city of Philadelphia, M. D., do make this codicil to my last will and testament, dated the twenty-sixth day of February, A.D. eighteen hundred and sixty (1860), in manner following—that is to say:—

Whereas, By my said last will and testament, I have provided that the bequests and devises to the Library Company of Philadelphia are to be held under the conditions and restrictions therein contained, and any others which I might thereafter impose; now, therefore, in accordance with, and in execution of that provision, I add and impose the following conditions, restrictions, and directions:—

First. One of my objects in giving my residuary estate for the use of the said Library Company was to express my respect and regard for my father-in-law, the late Jacob Ridgway, and my affection for and gratitude to his daughter, Phœbe Anne Rush, by erecting to their memories a monument which I hope will prove more durable than any other grateful record I could make, and be infinitely more useful to the community. As it was from them I derived the greater part of my property, which (under the special and prudent management of faithful and trustworthy agents) has enabled me to devote happily, and undisturbed, the latter part of

my life to pursuits of scientific inquiry, which I have designed to be more beneficial than the more common enjoyment of an ample fortune, it is both just and proper that I should thus employ it, the more especially as Mrs. Rush had led me to believe that if she had survived me, she would have applied it to a similar purpose. Now, in order to carry out this intention in a public and permanent form, I direct my executor to have a marble slab, with the following inscription, on a plain ground, with a border of simple moulding, without any surrounding ornaments, placed and maintained on some appropriate part of one of the interior rooms of the new library building, in which my private library and other personal effects are to be preserved,

THE RIDGWAY BRANCH
OF THE
PHILADELPHIA LIBRARY.
A MONUMENT TO THE MEMORY OF
JACOB RIDGWAY
AND OF HIS DAUGHTER
MRS. PHŒBE ANNE RUSH.

Second. I direct my executor to have inserted in the act of Assembly which will be required to carry out the provisions of my will and codicils, clauses enacting—

First. That not more than one-fourth of the directors of the library shall belong to any one of the three learned professions, of law, theology, or medicine. This clause is, however, not intended to exclude any of the present members from re-election.

No of Shares limited

Second. That the number of shares in the library shall be limited to those actually issued at the time of my death. But the managers, by their by-laws, shall have the authority to allow any respectable person depositing an amount and paying an annual sum to be fixed by the Board of Managers, to have the full and free use of the library, as completely as if they were shareholders.

Third. That the library shall not connect themselves with any other body, corporate or politic; my residuary estate will form a large fund for the use of the library, and I wish them to be free from every inducement to go beyond what I consider the legitimate objects of a library company.

Third. I will add that my reasons for choosing the Philadelphia Library Company for my residuary legatee and devisee are because it has always been conducted quietly and unobtrusively, steadily pursuing the appropriate objects for which such libraries were established, keeping entirely aloof from the excitement of politics and of other means whereby public bodies so frequently seek to obtain an evanescent and mischievous notoriety, and because during my early life I derived great pleasure and advantage from the use of its books, and from the readiness and civility with which they were always furnished me.

Voucher

Fourth. I understand that the Managers of Library Company have never applied any of its funds to defray

the expenses of the very simple refreshments of which they are accustomed to partake at the monthly meetings of the board, but have invariably paid them from their own personal means. I highly approve of this course, which I fear is not very usual, and in order that their example may be followed by their successors, I direct that no part of the funds of the Ridgway Branch of the Phildelphia Library shall ever be used or expended in providing refreshments, lunches (so called), feasts, or entertainments for managers, visitors, shareholders, or for any other persons whatever.

Fifth. I do not wish that any work should be excluded from the library on account of its difference from the ordinary or conventional opinions on the subjects of science, government, theology, morals, or medicine, provided it contains neither ribaldry nor indecency. Temperate, sincere, and intelligent inquiry and discussion are only to be dreaded by the advocates of error. The truth need not fear them, nor do I wish the Ridgway Branch of the Philadelphia Library to be encumbered with the ephemeral biographies, novels, and works of fiction or amusement, newspapers or periodicals, which form so large a part of the current literature of the day. The great object of a public library is to bring within the reach of the reader and student works which private collections do not, and cannot, contain, and which in no other way could be accessible to the public. Its excellence will depend—not upon the

number of its volumes—but upon their intrinsic value, and I wish this principle to be carried out by the managers, who, I hope, will never be influenced by the too common ambition for mere numerical superiority.

Sixth. I give and bequeath all my pictures, my private library, my manuscripts, copyrights, and papers, and also those of my father, Dr. Benjamin Rush (in my possession) to the Library Company, to be by them placed in a room in the new building, and there safely kept. The books may be used as the other books of the Library Company, but this room is not to be opened to gratify idle or objectless curiosity.

Seventh. I will and direct that the building to be erected for the Philadelphia Library Company, under the provisions of my will, shall have a basement story, of a height not less than eight feet six inches above the level of the pavement at its front, leaving the height of such basement in the rear to depend upon the grade for the drainage of the lot. The entrance to the front of the story, immediately above the basement, shall be by a broad flight of stone steps. Other entrances may be made in such places and manner as convenience or necessity may require.

Eighth. If the Philadelphia Library Company should omit or decline to accept my residuary estate on the terms and conditions in my will and codicils contained, or fail to comply with any of the preliminary stipula-

tions and directions therein mentioned, then I give and devise the whole residue of my estate, real and personal, whatsoever and wheresoever the same may be, after paying and securing all annuities, bequests, legacies and devises, other than those to the said Library Company in this, or any future codicil contained, unto HENRY J. WILLIAMS, my executor, in my said last will named, his heirs, executors and administrators in trust therewith, to found and endow a public library entirely distinct from and independent of the Philadelphia Library Company, to be named and called the Ridgway Library, under the rules, regulations, conditions and stipulations in my said last will, and the codicils thereto expressed and contained. I wish that the greater part of my estate may be spent in completing the new library building. The annuities as they expire and fall into my residuary estate will be amply sufficient for all the legitimate purposes of a library.

Ninth. By my last will and testament hereinbefore referred to (dated February 26, 1860), I have given, bequeathed, and devised my whole estate, real and personal, unto HENRY J. WILLIAMS, my executor, his heirs, executors, administrators, and assigns, in trust; in the first place to provide for, pay, and comply with all legacies, gifts, annuities, bequests and devises, declarations and intentions which may be contained or expressed in any codicil to the said last mentioned will and testament, which I might thereafter make, to be signed by

me at the end thereof, whether formally drawn or not; now, therefore, in pursuance of the above provision, I hereby direct, declare, bequeath, and devise as follows:—

Tenth. (Private bequest.)

* * * * * * * *

Eleventh. (Private bequest.)

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Twelfth. (Private bequest.)

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Thirteenth. (Private bequest.)

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Fourteenth. (Private bequest.)

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Fifteenth. (Private bequest.)

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Sixteenth. (Private bequest.)

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Seventeenth. (Private bequest.)

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Eighteenth. (Private bequest.)

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Nineteenth. (Private bequest.)

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Twentieth. (Private bequest.)

* * * * * * * *

Twenty-First. (Private bequest.)

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Twenty-second. I will and direct that all legacy or collateral inheritance taxes chargeable upon the bequests, legacies, and annuities given or bequeathed by my last will and testament or by any codicil thereto, shall be paid from and out of my residuary estate, and that all the annuities therein and thereby given shall commence from the day of my death. I also will and direct that all the annuities which I have given, or may hereafter give to any married lady, shall be for their sole and separate use, freed from all debts, obligations, or control of their respective husbands; and that all the annuities which I have given to any female, married or single, or which I may hereafter give them, shall be payable to them personally, or to their own order or receipt, signed and dated not more than three months before the same falls or becomes due, and shall not be subject to any anticipation, lien, or incumbrance, nor to any transfer or assignment by their own act, or by the act or operation of law, or otherwise. And in case any of the said female annuitants shall attempt to alien, anticipate, encumber, or assign her annuity, or cause, or permit, or suffer, or procure it to be done, then and in that case, I authorize and empower my executor, in his discretion, to withhold the semi-annual payments thereof (which shall fall into and become part of my residuary estate), until the attempted alienation, anticipation, lien or encumbrance, transfer or assignment shall be cancelled, released, given up, and annulled. And I further will and direct that all the annuities which I have given, or which I may

hereafter give, shall, upon the expiration of the periods for which they were respectively given, fall into and become part of my residuary estate.

Twenty-third. I direct my executors to dispose of the perishable part of my furniture, but not to have any auction upon any part of my premises. I wish it sold as quietly as possible, and would prefer a private sale, even if it were not so productive. I also direct my executor to keep my residence, No. 1914 Chestnut Street, for at least two years, unless he can dispose of it at private sale for a price which, in his sole discretion, he may think reasonable. At the expiration of that time he may dispose of it as he may think best.

Twenty-fourth. I have given verbal directions to my executor to have my funeral as private as possible, without any of the ordinary external indications of mourning.

No invitations are to be sent, except to my *nearest* relations, and I specially desire that I may be buried in silence. If circumstances will permit it, I should be glad that the remains of the late Jacob Ridgway, of his daughter, my late wife, and of myself, should be removed to the new library building, when it is completed, and be placed in some spot within the outward limits of the building, under a plain and simple tablet. The library itself is intended for their monument, and I want none for myself. If, however, the parties interested in the ground in which my father-in-law is buried should object

to his removal, then I desire that my wife and myself may be placed in the new library building as above directed. The library will then be her monument, and I desire to lie by her side.

Twenty-fifth. And I further will and direct that if any of the devisees or legatees or annuitants herein named shall attempt, themselves, or aid, assist, or encourage others to question, dispute, litigate, or object to the validity or effect of any part or portion of my will, or any codicil thereto, or of any gift or devise therein mentioned, then, and in that case, all the clauses in my said will or any codicil thereto conferring any benefit upon the person or persons aforesaid shall stand and be revoked and annulled, and the same shall be paid and given over to the said Library Company.

Twenty-sixth. Events and circumstances occurring within the last six years have obliged me to make several changes in my will, and I should have preferred that all my testamentary dispositions should have appeared as a complete whole, instead of being contained in separate instruments; but at my age life is precarious, and were I to have them condensed, redrawn, and re-executed, the most important part of the whole might fail under the operation of the ill-conceived, inconvenient, and mischievous law (resulting from a narrow sectarian spirit) which avoids all gifts to literary or religious institutions made and witnessed within a calendar month of the termination of a testator's life, no matter what his

mental capacity may have been. To avoid the possibility of such a result, I must let it stand as it is, and add other provisions as they may occur to me.

Twenty-seventh. If any annuitant in any codicil to my last will named, whose residence is in the United States of America, shall leave this country after my death to remain either temporarily or permanently abroad, I will and direct that their respective annuities shall be suspended until their return; and the several half yearly payments becoming due during their absence shall fall into and become part of my residuary estate.

Twenty-eighth. I desire my executor to be allowed a commission of three per cent. upon the administration of my estate; and, in the case of the death of my brother-in-law, HENRY J. WILLIAMS, whom I have named as my executor in my last will, either before or after me, I nominate and appoint Colonel Alexander Biddle and Thomas Craven to be my executors in his room. They are not, however to assume the executorship, or be qualified therefor, until after his death, resignation, or refusal to act.

In witness whereof I have hereunto set my hand and seal this 16th day of May, An. Dom. eighteen hundred and sixty-six (1866).

(Signed) JAMES RUSH. [SEAL.]

Signed, sealed, published, and declared by Dr. JAMES RUSH above named, as and for a codicil to his last will

and testament, in our presence, who, in his presence and in presence of each other, at his request, have affixed our names as witnesses thereto.

J. S. FARMER, May 16, 1866.
RICHARD S. HUNTER, May 16, 1866.

ADDITIONAL CODICIL.

Be it remembered, That I, JAMES RUSH, of the city of Philadelphia, M.D., do make this additional codicil to my last will and testament, dated the 26th day of February, A. D. (1860) eighteen hundred and sixty, in manner following—that is to say :—

First. I have given and devised the greater part of my estate to my executor for the purpose of erecting for the Library Company of Philadelphia a building not only large enough to contain their present books, but also their probable increase for many years to come. Now, as I do not desire that the Library Company shall have an income greater than is required to provide for the legitimate (not a competing) increase of the library and their current expenses (not to be so large as to invite extravagance and waste), for which purposes the sums to be set apart to secure the legacies and annuities given by my said will and testament will be sufficient, I hereby authorize and direct my said executor to expend the whole remainder of my estate in the purchase of a lot and the erection of the library building, construction of

book-cases, &c., leaving the said company only an income sufficient to defray the ordinary and strictly appropriate expenses of such an institution.

I have observed that large annual incomes in corporate bodies almost invariably lead to wasteful extravagance, and cause the institutions to become the prey of schemers, who, under the specious cloak of liberality, or of being what is called public-spirited citizens, have no hesitation in spending the money of other people, in order to gratify their own vanity, or to promote their private interests. Such persons pass so much of their time in the distraction of change from one place of popular importance to another, that they have no opportunity for observation and reflection, to gain intellect enough to comprehend the purpose of books of knowledge, and therefore can be of no service, but rather the means of disturbing the quiet duties of a public library. Let them find instruction in its volumes with thankfulness and modesty, yet beware of admitting them to even a part of its government, or they will be sure—unless the managers are wise and watchful—by some manœuvre to direct the whole. They are consequential spendthrifts, who, under the plea of patriotic improvement and of ornamenting a city, misapply government taxes, and embarrass the funds of scientific, literary, and charitable, as well as moneyed institutions, over which, by popular artifice, they have gained a control. As a condition, therefore, of my will, let the managers and contributors join to exclude all such persons from the direction of the

Library Company. It is from the quiet, unostentatious, and disinterested character of its directors, and of their management, that I have drawn the motives which induced me to choose the Philadelphia Library Company as the heir to my estate; and I would add a very influential consideration, that, having always conducted its affairs with prudence and foresight, it has never, by living beyond its means, in collecting more books than it has room for, been brought to the disgraceful pauper condition of those institutions which are constantly begging for thousands, and drawing upon the public purse by fairs and lotteries, in order to erect splendid buildings, or to pay debts rashly and inconsiderately incurred.

Second. I have in my will limited the extent of the lot to be purchased for the library building, as well as its locality; but as I desire that it shall have not only strength, durability, and accommodation, but also be of sufficient magnitude for any future or contingent, but not an ambitious or competing, increase of the library; in order to prevent, if possible, its being torn down in twenty years, and the lot sold at a speculative profit to suit the hyperbole of the times, I authorize and allow my executor, under a broad and thoughtful foresight, to increase the size of the lot, and select any situation he may deem most expedient, without regard to any provision of my will or codicils. I know that an ostentatious library, to keep up with the progress of our country, collecting too many books, may be like an avaricious

man who accumulates money to the ruin of both his modesty and his intellect. But I have a forlorn hope that the mind may yet be improved beyond a patronage or even a toleration of those crowds of graver or more puerile fictionists who mislead the idle, and of those garbling compilers who overlook or corrupt the truth of fuller and more useful works by purloining from their pages, in attempting to abbreviate and render them popular for their own advantage.

Third. I have given the copyrights of all my works to the Library Company, and I will and direct that they shall, for the next half century, publish every ten years (and earlier and oftener if called for) an edition of five hundred copies of any or of all of them, so that they shall always have on hand a number sufficient to supply any demand which may be made for any or either of them, at a price not exceeding the cost of publication. I leave additions and corrections in the printer's copies, preparatory to a subsequent edition which I imperatively require to be published exactly as they are left. The original parts of them have been written *without assistance*, and I wish to be alone responsible for all the faults of thought, division, definition, and style, and of my corrected orthography, as I consider it.

An editor sometimes joins himself to a work by a supposed emendation of it. Let him in a book of his own justly blame what he pleases in mine, but not attempt to suit it to any future times and manners.

Every writing should have its own times and manners. Let him prevent not imagine typographical errors; let him strive to improve my spelling only when the world corrects its own redundancies, and confusions on that point. In our important faults it is bad morality, even in science and literature, to try to escape the charge of errors by turning them over to others for correction.

Fourth. In order to insure, as far as is in my power, the application of the various devises and bequests which I have made for the use and benefit of the Library Company, in accordance with my wishes and directions, I hereby devise, direct, will, and declare that the whole and every part of my estate, real and personal, given or devised for the use and benefit of the said Library Company, and all the books and furniture purchased by them with the income and proceeds thereof, shall be taken and held by them (whenever the same by the provisions of my will, or of any codicil thereto, shall come into their possession, and become subject to their control), as trustees, for the uses, objects, trusts, and purposes in my said will, and any codicil thereto mentioned and expressed; and if the said Library Company shall in any respect violate or omit to comply with any of the provisions, conditions, or directions, regulations, or restrictions, therein contained, then I will and direct that the Pennsylvania Company for Insurances on Lives and Granting Annuities, shall and may (or if they omit, neglect, or refuse so to do any citizen of the city of Philadelphia)

apply to the proper courts of this Commonwealth to compel the said Library Company to comply with the provisions of my said will and codicils, or to remove them from the said trusts, and transfer the whole real and personal estate aforesaid, including the library building, and all the books and furniture belonging to the Ridgway Branch of the Philadelphia Library, unto the said Pennsylvania Company for Insurances on Lives and Granting Annuities, or if they shall neglect or refuse to accept this trust, to some other trust company of the city of Philadelphia, who shall take and hold the whole of the said estates, real and personal, library building, books, and furniture aforesaid, in trust to collect and receive the whole income thereof, and apply the same to the uses, objects, and purposes of my said will and codicils thereof; permitting, however, if in their sole discretion they shall think proper so to do, but not otherwise, the said Philadelphia Library Company to occupy the library building, and to take charge of the books, &c., of the Ridgway Branch thereof; provided they shall do so under the absolute direction and control of the new trustees, who shall strictly supervise and entirely control and direct all the expenditures of my estate in relation thereto; and who may, at any time, remove them from the said charge, if the Library Company shall not submit and conform to such control and direction.

Fifth. If at any time Mr. Thomas Craven should take out letters testamentary to my estate, I will and direct

that the amount of the annuity heretofore given him, shall be credited to my estate, and deducted from the commissions to which he will be by law annually entitled; and if those annual commissions should not equal the amount of such annuity, it shall be taken and considered as full payment thereof.

Sixth. I desire to express still more emphatically than I have yet done my wish and direction that the Library Company shall never make any efforts to rival the other libraries of America or of Europe in the mere number of volumes they contain. If the amount of books in the Philadelphia Library is simply recorded in its catalogue, it will be sufficient for every useful purpose; and whatever its number may be, it need not be held in the gloom of discontent at its inferiority to others, nor in a prideful exultation at its excess above them. Let it rest in a modest contentment in the useful quality of its volumes for the benefit, not the amusement alone of the public, nor let it over an ambitious store of inferior printed paper, flap its flimsy leaves, and crow out the highest number of worthless books. Let it be a favor for the eminent works of fiction to be found upon its shelves; but let it not keep cushioned seats for time-wasting and lounging readers, nor places for every-day novels, mind-tainting reviews, controversial politics, scribblings of poetry and prose, biographies of unknown names, nor for those teachers of disjointed thinking, the daily newspapers, except, perhaps, for reference to support, since

such an authority could never prove the authentic date of an event. In short, let the managers think only of the intrinsic value of additions to their shelves; for I hope (yet fearfully) that the streams flowing into the library will be clear, pure, and deep, diffusing healthy, truthful, and valuable information throughout the community, and not to be overborne by a common flood of cotemporary literature that may sweep off the firm foundations of knowledge, and leave no high places for a useful intellect to rest upon, to extend its bounties, and to be secure.

To assist in accomplishing the purposes of instruction above declared, let the contributors strive to elect to the management, if they can be found, at least one or two persons of *general knowledge*, men of more than common college and high-school education, with broad observation, reflection, and taste, and liberal thoughts; not sectarian to any of the professions, nor to the gains of trade and speculation, but those who have been called "men of good choice," and who may have wider views in government and selection than are commonly taken by the conventional and popular character of most public beneficiaries; recollecting not only there is safety in the multitude and agreement of counsel, but that wisdom, too, should there be found which will insure safety in giving the broadest intellect with its widest compass the opportunity to enlighten, to caution, and to extend the capacity of those whose occasions or means or disposition

may have prevented their thinking it necessary to go beyond the self-satisfied character of a majority.

In witness whereof I have hereunto set my hand and seal, this eighteenth day of April, An. Dom. eighteen hundred and sixty-seven (1867).

(Signed) JAMES RUSH. [SEAL.]

Signed, sealed, published, and declared by the above named Dr. James Rush, as and for a codicil to his last will and testament, in our presence, who, in his presence and in presence of each at his request, have hereunto set our hands as witnessess thereto.

J. S. FARMER, April 18th, 1867.
R. S. HUNTER, April 18th, 1867.

LAST CODICIL.

(Relating to private bequests.)

Witness my hand and seal this twelfth day of April, A. D. 1869.

(Signed) JAMES RUSH.

WILLIAM F. JUDSON, J. S. FARMER, and R. S. HUNTER, the subscribing witnesses to the foregoing last will of JAMES RUSH, M.D., deceased, sworn May 31st, 1869.

JOHN H. CAMPBELL,
Dep. Register.

J. S. FARMER and RICHARD S. HUNTER, the subscribing witnesses to the foregoing first and second codicils to the last will of JAMES RUSH, M.D., deceased, sworn May 31st, 1869.

JOHN H. CAMPBELL,
Dep. Register.

WILLIAM F. JUDSON and J. S. FARMER, sworn May 31st, 1869, as to the signature of JAMES RUSH, M.D., the testator above named, and appended to the third codicil to his last will.

JOHN H. CAMPBELL,
Dep. Register.

HENRY J. WILLIAMS, the executor within named, sworn May 31st, 1869, and letters testamentary granted unto him.

JOHN H. CAMPBELL,
Dep. Register.

Spirits Turpentine, 28s.; all others unchanged.

THE WILL OF JAMES RUSH.

He Bequeaths His Estate to the Philadelphia Library Company.

The will of Dr. James Rush was admitted to probate this morning, and, after the usual introductory clauses, the will says:—

I bequeath to my executor in trust to select and purchase a lot of ground not less than 150 feet square, situate between Fourth and Fifteenth and Spruce and Race streets, in the city of Philadelphia, and thereon to erect a fire-proof building sufficiently large to accommodate and contain all the books of the Library Company of Philadelphia, and to provide for its future extension according to plans, directions, or specifications which I shall hereafter make or give; but if I should not make or leave any such plans, directions, or specifications, then to erect the same according to the best judgment of my executor (H. J. Williams), and to the views which I have expressed to him. * * * *

So soon as this building is completed and ready for occupation, then to convey the same, with the lot of ground, unto the Library Company of Philadelphia, and their successors, for the uses and purposes of their library, and for no other use or purpose whatever. Provided, however, that before any such conveyance shall be made to said library company, they shall, either by an alteration in their charter, or in some other way satisfactory to my executor, bind themselves and their successors to conform to and comply with the following express conditions and any other I may hereafter impose, under which they are to hold the said property and all other bequests and devises, herein or hereafter given to them:—

1. That the said Library Company shall not cause, allow, or permit any lectures, public orations, or oral addresses, or exhibitions of any kind to be delivered, given, or to take place on the said lot of ground, or in the said building; nor shall they cause, allow, or permit the formation of any museum, cabinet, gallery, or collection of natural history, statuary, sculpture, portraits, or paintings thereon or therein, nor shall they use, apply, or expend any funds derived from me, or under my will, in procuring or defraying the expenses of any such lectures and exhibitions, public orations or oral addresses, or in the establishment or support of, or for additions to, any such museum, cabinet, gallery, or collection, paintings or portraits on the said lot and in the said building, or elsewhere.

2. That all the accounts of the receipts and expenditures from the estates aforesaid, real and personal, should be kept separate and distinct from all other accounts of the said Library Company, and shall all be headed and kept as the accounts of "The James Rush branch of the Library Company of Philadelphia," so that it may be always easily and certainly ascertained whether the application of these estates and the incomes derived therefrom have been in accordance with the provisions of my will.

I further will, direct, bequeath, and devise that whenever the said building shall have been completed and transfered to the said library company, and the preliminary conditions complied with, then my executors shall assign, transfer, and convey by one or more deeds, all the rest and remainder of my residuary estate, not laid out and expended in the purchase of the lot and the construction of the building, unto the said library company, to be held and used by them and their successors, for the following uses, trusts, and purposes:—

First. To keep the whole of the real estate granted and conveyed to him in good order and repair, and to make from time to time such additions to that building as may be found necessary for the extension and preservation and convenient use of the said library and all additions thereto.

Second. After paying all necessary taxes, &c., to set aside annually ten per cent. of the clear income, to come, to form a contingent fund, to be invested, and the interest added to the principal, which fund shall be applied:—

1. To build upon, improve, alter, and renew any lands and tenements hereby devised to the said company, so as to increase the income.

2. To make good and to replace any losses from the failure of any investments made of or from the property.

3. Whenever the contingent fund shall amount to $30,000, then to pay over and apply the surplus beyond that amount for the general purposes to which the income of the estate is herein erected to be applied.

3. To pay all necessary salaries of the librarian and his assistants, and the expenses of binding and preserving the books of the whole library, making cheap catalogues, and all charges incident to its care and management. The said library to be kept open from 9 o'clock A. M. until at or near sunset, except on Sundays and holidays.

After complying with and fulfilling the previous trusts and purposes, to apply the remainder or surplus of the said net annual income, or so much thereof as may be necessary or desirable, to the increase and extension of said library.

I direct that no portion of my real estate shall be sold by the library company for ten years after my death, nor then unless it be absolutely necessary for the purposes of this trust, even if additional income should be derived therefrom; and in no case unless the said sales are sanctioned by a decree of the Orphans' Court or a court of equity, which shall decide such sales are not in contravention of the spirit of my will.

In order to enable my executor to carry out the directions of my will, I hereby authorize and empower him to grant, bargain, and sell any part or parts of my real estate at public or private sale, for any price or consideration, with any restriction, reservation, covenant or conditions, for cash or on credit, taking security on the premises for the balance of the purchase moneys; or to let on ground rent, mortgage, exchange, or make partition of the same or any part or parts thereof, and to seal, execute, and deliver all deeds, conveyances, mortgages, assurances, and other instruments, necessary for the purposes aforesaid, without any obligation on the purchaser or purchasers to see to or be responsible for the application of the purchase money or other consideration, or for the propriety of the exercise of the power.

I further will, devise and direct that all investments, if any, should be made by my executor, and all these which may at any time hereafter be made by the said library company from the principal or income of any said estate, shall be in ground rents or other real estate in the State of Pennsylvania, or in bonds and mortgages upon property within the said State; or in loans of the said State or of the United States.

And lastly, I hereby appoint my brother-in-law, Henry J. Williams, of the city of Philadelphia, executor of this my last will and testament.

In witness whereof, I have hereunto set my hand and seal this 26th of February, 1860.

JAMES RUSH.

Witness; William F. Judson, J. S. Farmer, R. S. Hunter.

WILL OF THE LATE DR. JAMES RUSH.—This morning the will of Dr. James Rush was proved at the office of the Register of Wills. It is extremely voluminous, and we can now only give a sketch of it. The original will was drawn in 1860. It appoints his brother-in-law, Henry J. Williams, Esq., his Executor. The testator gives all his property, after payment of debts, and certain bequests and annuities, to the Philadelphia Library Company, to erect a suitable fire-proof building, and to maintain the library.

The bequests and annuities are to certain servants, relatives and friends, and they range in amount from $200 up to $1,800. Only small annuties are left to his nephews and nieces, and a recent codicil annuls these in the cases of three of them.

The personal bequests in the will are as follows:

To Mary Lee, domestic, $200.

To Anne Knee, a faithful servant, $200 yearly.

To Mrs. Catharine Souder, wife of Jacob Souder, $200 yearly.

To Thomas Craven, business agent, $600 yearly.

To Mrs. Caroline Little, and Mrs. S. H. Spruill, and to the survivor of them, $1,800 yearly.

To Miss Mary Ritchie, $1,000 yearly.

To several nephews and nieces, $360 each, yearly.

To a niece, Mrs. Georgiana Clark, $1,800 yearly.

To Major R. Manners, and Mrs. Mary Manners (a niece), $900 each, yearly.

To Mrs. Alexander Biddle, a niece, $1,800 yearly.

The new building for the Library is to be called "The Ridgeway Branch of the Philadelphia Library," and it is designed as a monument to the father-in-law and the wife of the deceased. He desires their remains and his own to be placed within the limits of the new library with a simple inscription. His copyrights, books, manuscripts and other personal effects he wishes to be preserved in a room constructed for them, which, however, is not to be opened for the satisfaction of vulgar curiosity.

He gives most minute advice to the managers of the Library as to the choice of books, and especially cautions them against competing with other libraries in the number of their volumes. He advises them not to give much space to those "teachers of disjointed thinking, the daily newspapers." Novels and mischievous reviews also receive some pretty hard hits.

The new building is not to be used for meetings, lectures or orations, and no part of it is to be appropriated to museums of natural history or art, or to collections of pictures and sculpture. These are thought to be foreign to the purposes of a library.

Provision is made for printing new editions of the testator's writings whenever there may be a demand of them, to be sold at the cost of publication.

The entire will would fill many columns of this paper. The estate is rated by the executor at under one million of dollars.

The following passage from the part of the will giving advice concerning the Library is interesting:

"Let it be a favor for the eminent works of fiction to be found upon its shelves, but let it not keep cushioned seats for time-wasting and lounging readers; nor places for everyday novels, mind-tainting reviews, controversial politics, scribblings of poetry and prose, biographies of unknown names, nor for those teachers of disjointed thinking, the daily newspapers, except, perhaps, for reference to support, since such an authority could never prove the authentic date of an event. In short, let the Managers think only of the intrinsic value of additions to their shelves; for I hope (yet fearfully) that the streams flowing into the Library will be clear, pure and deep; diffusing healthy, truthful and valuable information throughout the community; and not to be over-borne by a common flood of contemporary literature that may sweep off the firm foundations of knowledge, and leave no high places for a useful intellect to rest upon, to extend its bounties and be secure."

Decoration Day. The full report of the

SUNDAY DISPATCH.

PHILADELPHIA, JUNE 6, 1869.

Dr. Rush's Will.

The Will of Dr. James Rush, which was published last week, has created very considerable discussion. It is an odd affair, not only upon account of the peculiar devises made by the testator, but by reason of the method which he has taken to leave on record his sentiments and opinions upon matters entirely beyond the object of his donation. Dr. Rush makes the Philadelphia Library his residuary legatee, having previously made some very inconsiderable and contemptible legacies, principally to his relatives, none of which can last longer than their lives, and some being liable to be withdrawn at a much earlier period. With the disposition of a man's wealth the public have usually nothing to do. Where a person is childless, he himself must be the judge as to whether collateral heirs have, by their conduct, deserved a remembrance. Still the personal legacies of Dr. Rush are so small, in comparison to his means, that they seem to be insults rather than compliments to the persons to whom they are to be paid. The restrictions placed upon the female legatees, in regard to their marriage at some future time, seem to be derisive and cruel. This is not the case of a dying husband who wishes to prevent another man from enjoying as a second husband the benefit of an estate which he had accumulated by his industry. Dr. Rush deliberately says to every widow whom he names as legatee, "You shall not marry again!" To the spinster he says, "You must remain an old maid, under pain of forfeiting my bounty!" It could not have been necessary to a kind-hearted man to have placed such odious restrictions in his Will, and the fact that they are found there might justify the suspicion that his own matrimonial experiences had been so unhappy that the encouragement of marriage seemed to him to be a folly. It would have been much more to the credit of Dr. Rush if he had made no personal legacies, and had given all to the institution which he had selected for endowment.

The most remarkable portions of the Will are those in which the testator undertakes to give his opinion as to the manner in which the Library Company of Philadelphia shall be conducted. In his last codicil his directions are curious. Having previously appropriated sufficient for the erection of an excellent building, and to furnish a fund which would enable the company to purchase books in sufficient number to keep up with the course of current literature, he abandons that intention, and directs that by far the greater portion of his estate shall be appropriated to the erection of a library building with its present collection and its increase for years to come, reducing the income to an amount sufficient to defray "the ordinary and strictly appropriate expenses of such an institution." What he may mean by this is not very clear. Some might think that the ordinary expenses of such an institution would be the cost of maintaining librarians and of heating, lighting, and such repairs as would be necessary in the progress of time to the library building. Others would believe that the ordinary expenses of a library company ought to embrace whatever amount is necessary for the purchase of books, not only those issuing from the press, but old publications. This is a matter which will require some interpretation hereafter, and we have no doubt that it will be liberally construed by the executor, who seems to have authority to act in almost everything according to his own discretion.

Dr. Rush expresses himself strongly against "consequential spendthrifts," whom he defines to be "schemers who, under the specious cloak of liberality, or of being what is called public-spirited citizens, have no hesitation in spending the money of other people in order to gratify their own vanity or to promote their own interest." He says further, that, "under the plea of patriotic improvement and of ornamenting the city, they misapply Government taxes, and embarrass the funds of scientific, literary and charitable as well as moneyed institutions over which by popular artifice they have gained a control." This seems to be a very sweeping sarcasm, which may be directed against society in general. Doubtless there are men in all communities anxious to put themselves forward, who are very willing to assist in spending the money contributed by others. But there are few, even of that class, who escape the necessity of themselves making contribution. We fear that Dr. Rush did not belong to that class. His reputation as a contributor to institutions of charity and science, during his long life, has not been widely diffused.

virtue benefit or injury of future generations.

Some expressions in Dr. Rush's Will have excited considerable comment in the columns of the daily press. In laying down his code of laws for the government of the Library Company, he expresses himself against "those crowds of graver or more puerile fictionists who mislead the idle." He also censures "those garbling compilers who overlook or corrupt the truth of fuller or more useful works, by purloining from their pages, in attempting to abbreviate and render them popular for their own advantage." He is opposed to "every-day novels," to "mind-tainting reviews," to "essays and works upon controversial politics," to "scribblings of poetry and prose," to "biographies of unknown names," and to "those teachers of disjointed thinking, the daily newspapers." These objects of censure are so wide that, if Dr. Rush's instructions were closely obeyed, the Philadelphia Library would become exceedingly restricted in its operations. "Every-day novels" may be entitled to the censure of the eccentric testator; but reviews, which are the highest channels of pure criticism upon books and upon works of art, are the medicine which purges literature of its foulness. "Controversial politics," which Dr. Rush proscribes, contain the seeds of History. No man can truly understand the progress of a nation and the causes which have controlled it, whether for good or bad, unless he is acquainted with the controversies arising under Governments which have controlled the actions of men and the progress of States. What are "scribblings of poetry and prose" is scarcely definable. There is no doubt much that is feeble and worthless which gets into print and takes the shape of books. But mankind generally has sufficient intelligence to judge between the useful and the useless. The verdict cannot be correctly made up until long after those "scribblings" have ceased to be novelties. No library can be complete or useful which undertakes to exercise a censorship over cotemporary literature and to decide, while yet the book is new and easily to be purchased, whether it is worthy of admission to its shelves. "Biographies of unknown names" are not likely to be plentiful, and it would be a difficult thing for the most intelligent man to decide what names are, or ought to be, unknown. As Biography is, or ought to be, Fact, it is difficult to perceive what injury could be done by the preservation of accounts of the lives of the most humble. As for "those teachers of disjointed thinking, the daily newspapers," while there may be some truth in Dr. Rush's animadversion, there is in it little tact or good sense. The daily press, publishing every twenty-four hours accounts of events occurring in all parts of the world, most of which have happened during the period intervening since the publication of the last number, must make its comments quickly, and perhaps at times does so wrongly. It must think upon the subject of To-Day as it appears To-Day, without being able to see how the events of To-Morrow may modify its judgment. By this necessity its teachings may be "disjointed;" but there is a compensating intelligence in the public which accommodates itself to the changing necessities of the hour, and which eradicates to-day whatever erroneous impressions may have resulted from the "disjointed teachings" of yesterday.

Newspapers, with all their errors, are the foundation upon which Modern History must rest. No man who aspires to the character of a true chronicler can accomplish himself in the knowledge of public events which he desires, without reference to and in many particulars without entire dependence upon well-conducted newspapers. No well-managed library will reject these "disjointed teachers;" and the Philadelphia Library, whose collection of local newspapers is perhaps larger than that in any library in the country, could scarcely desire to reverse a policy entered upon in the earliest days of the corporation, and which has been faithfully carried out.

Looking over the whole story of this bequest, the restrictions which have accompanied it, and the peculiar notions of the testator, the only point deserving of congratulation is that the Library Company should have been selected as the recipient of the bounty of the decedent. It is a useful, a worthy, and a well-conducted institution, and the fact of its good management is more conclusively shown by the circumstance that many of the things to which Dr. Rush objects have been constantly, thoughtfully and usefully done by its directors and stockholders from the moment of its organization.

An Absurd Will.

To the Editors of the Sunday Dispatch:—Dr. James Rush was known in our community as the husband of Mrs. James Rush. Mrs. Rush was a lady of remarkable personal appearance, who late in life inherited a considerable fortune from her father, Jacob Ridgway, a successful merchant. She built out of it a large house, externally plain and tasteless in appearance, but furnished within with great luxury. She resided in it up to the time of her death, and left it, with all the residue of her estate, to her husband. He continued to live in it, or rather in some attic of it, in a style of great penury. He was never known to give a dollar of his large means to any of his relatives, many of whom were badly in want of assistance, nor to any object of charity, however meritorious. The time, however, he said, would some day come when he *must* loose his hold upon his money, and he seems to have devoted his leisure hours to writing a work in the form of a Last Will, which he was sure that posterity would read. It ostensibly assumes to found a great Public Library. That is his text, and upon it he preaches a long, sneering and captious discourse. No one can rise from the perusal of it with the impression that it is the effort of a mind filled with good-will to mankind, or of a man who had nursed his great fortune to enable him to perfect a scheme of large philanthropy. It is hard, selfish and unjust from beginning to end. Not a throb of large-hearted generosity can be found in it. He gave because he could not hold—grudgingly—with provisos and restrictions and conditions. The personal bequests are illusory. They are thrown at the heads of the recipients in the most offensive form. They are few in number and contemptible in amount. He leaves to nieces three hundred and sixty dollars a year—not quite a dollar a day—to be forfeited if they marry, and to be withheld if they go abroad either permanently or temporarily. If they attempt "to alien, anticipate, or encumber or assign, their annuities," the sums are at once to be forfeited. This is the spirit which pervades the Will relative to friends and relatives.

benefit or injury of future generations.

As regards the Public, we think we perceive the same narrow-mindedness. Dr. Rush could not take his money with him—that was clear. He had no relatives for whom he had much affection—that is plain. He therefore, from an idea that his wife would have thought it a good thing, gave it, after a fashion, to the Philadelphia Library Company. He trusts them as little as he trusts his relatives. The building is to be erected, and then handed over to them after all the funds (except those which will fall in hereafter from the death of annuitants) have been expended upon it. It is to be erected on Christian street, the most remote point from the great body of stockholders to be found within the built-up portions of our city. Then his copyrights, manuscripts, and certain personal effects, are to be kept in a room by themselves, but "this room is not to be opened to gratify idle curiosity." And—worst of all!—the Library Company are to publish an edition of his works every ten years, for the next fifty years! He thus appeals from the judgment of his cotemporaries to the judgment of posterity, and endeavors to give vitality to lucubrations which possess none in themselves. Had he made it the duty of the directors to read them, he might probably have secured more than the formal printing of them.

The only architectural directions we find in the Will are, that the building "shall have a basement story of a height not less than eight feet six inches above the level of the pavement," and "the entrance to the front of the story immediately above the basement shall be by a broad flight of stone steps." This remarkable architectural beauty is probably copied from the specifications for the erection of the house in which the testator lived. The grand effect can there be seen by all beholders! There is no one thing more unsuited to our climate than a high flight of stone steps, dangerous in winter from ice and snow, and blinding in summer from the reflection of the sun. He did well to make this direction peremptory.

The rest of the Will is filled up with general reflections of every kind. Public-spirited citizens are described as "consequential spendthrifts, who, under the plea of patriotic improvement and of ornamenting a city, misapply Government taxes and embarrass the funds of scientific, literary and charitable as well as moneyed institutions over which by popular artifice they have gained a control. As a condition of my Will, let the managers and contributors join to exclude all such persons from the direction of the Library Company." There is to be no place for "those teachers of disjointed thinking, the daily newspapers, except perhaps for reference to support, since such an authority could never prove the authentic date of an event." The men who should control the Library, he thinks, should be "men who have wider views in government and selection than are commonly taken by the conventional and popular character of most public beneficiaries; recollecting not only there is safety in the multitude and agreement of counsel, but that wisdom, too, should there be found which will insure safety in giving the broadest intellect with its widest compass the opportunity to enlighten, to caution and to extend the capacity of those whose occasions or means or disposition may have prevented their thinking it necessary to go beyond the self-satisfied character of a majority." This sentence, if published with the collected works every ten years, may in the course of time become clear to intellects having the advantage of cultivation in the "Ridgway branch;" but at present it seems a little "hazy."

The Library Company, then, are to have offered to them, at some day in the future, a building in whose construction they are to have no voice, located in a position distasteful and inconvenient to almost all of them. At some still more distant future they are to receive, as an endowment, the annuities now left to individuals, amounting to somewhat over eight thousand dollars. The question will arise, when the building is finished, Is it worth accepting? At present their "poverty, if not their will," may induce the Library Company to do so. That this may not be the case when the time arrives, is the sincere wish of

JUSTICE.

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virtually p[illegible]
benefit or injury of future generations.

THE NEW LIBRARY.

To-day the shareholders of the Library Company of Philadelphia vote to accept or reject the Rush bequest. The magnitude of this bequest furnishes the best, and almost the only argument for its acceptance. An intelligent and generous disposition of it must inevitably add a stately building to the many which now adorn our city, while the surplus will afford an ample fund for the procuration of every valuable work. The dullest mind must, however, feel sorry for the constraining and hampering clauses in the will. An instrument so ridden down with conditions must prove exceedingly difficult to execute. The Philadelphia Library Company is a vigorous institution, and public faith in it has always been on the increase. In so far as a discerning management could do, the general requirements of a great central library have been met, the rising wants of the reading community have been anticipated, and the promise is fair that they will ever be.

Acceptance of the trust raised in the will necessitates a division of the library into two parts. Will its utility be enhanced or destroyed by this divorce?

Perhaps it will be enhanced, in view of the immense fund thereby placed at its disposal. Perhaps it will be destroyed, in view of the fact that all the valuable works it now contains, all the standard authors, all the really tangible books of reference, must go to the new building, while the old will be nothing more than a repository for the trash of the age. A love-lorn Miss of sixteen or a melancholy gent of the same age can better afford to walk a mile or two for their mental medicine than can a lawyer, doctor, preacher, editor, or business man a square or two for his peremptory references.

The old library, or rather the remnant left after partition, cannot profit by the bequest in any way, for the instrument that forbids its books from entering the new building withholds pecuniary assistance also.

There is a provision of this very remarkable will that we fear has escaped the attention of the shareholders and the public. One of the conditions of acceptance is that the trustees, *i. e.*, the directors of the library, shall at intervals of ten years publish five hundred volumes of the testator's posthumous works. The character of these works has never transpired. Dr. Rush was a confirmed ascetic. His industry was as proverbial as his idiosyncrasy. It is not improbable, therefore, that he has virtually piled "tome upon tome" for the benefit or injury of future generations. We trust sincerely the former; the directors would be assuming an awful responsibility if the latter. Let them pause solemnly before assuming an unknown responsibility.

What will be lost by a rejection of the bequest? Nothing. Its acceptance will give us a Ridgway Branch of the Philadelphia Library, an appenage, as it were, under the control of the directors of the latter institution as trustees. Its rejection will give us a Ridgway Library under the control of the executor of the will—an institution independent, untrammeled by anything but the conditions of the will, equally comprehensive in its details, and as to architectural appointments, equally superb and convenient. It is clear, then, that nothing will be lost by rejection. Will anything be gained? Acceptance will be the obscuration of the old and time-honored institution. Its officers, than whom none have proved more worthy, will take it upon themselves to manage a difficult trust imposed by the will in addition to that imposed by the shareholders. Of their capacity so to do we entertain no doubt; of the policy of so doing there are great doubts. It would be unfair to them for the shareholders to duplicate their labors. It would be unfair to the old library for its officers to have their time and attention occupied by newly-imposed sinuous and litigious duties.

THE PHILADELPHIA LIBRARY.

A meeting of the stockholders of the Philadelphia Library is called for the 29th instant, to consider the propriety of accepting the bequest of the late Dr. Rush. It rarely happens that there is much hesitation in accepting a large pecuniary bequest, and the face of Dr. Rush's will suggests no sufficient reason for refusing his money with the conditions attached to it. Some are whimsical and some are personal, but charity covereth a multitude of sins, and the Library company will, no doubt, charge itself with the republication of his works, and the fulfilment of his other expressed wishes, in consideration of the benefits to be derived from a large increase of the funds of the institution. But there remains a point in which the public has an interest that we hope will not be lost sight of—we mean the location of the building. Looked upon as a place of interment for Dr. Rush and his family, it may be placed at Laurel Hill, or Mount Moriah, or at any proper cemetery distance from the "busy hum of men." But, if the Philadelphia Library is to be buried in the same spot, it is a matter that concerns all students and scholars. To those who occupy themselves with any branch of literature in Philadelphia, the present Library is a favorite and convenient resort. It has on its shelves a great number of works not elsewhere accessible, and every one may without charge examine or read any book as long as he chooses, or, upon reasonable terms, may take it home for perusal. All this is facilitated by the prompt courtesy of the Librarian, a gentleman well versed in the literature by which he is surrounded, and able and willing to aid the researches of any inquirer. Now if this institution is to be put out of the convenient reach of most of those who use it, then, we shall have "gained a loss" by the Rush bequest. Of course we are now alluding to a current report that the library is to be placed at the corner of Christian and Broad streets. This is so preposterous a site for a city Library that we have yet to hear any man, woman or child approve or excuse it. Some would be willing to submit to it, as the irrevocable will of an eccentric old man who has found refuge from argument and remonstrance in the grave. But this is certainly not the case. There is but one express direction in his will, and that accords with universal public sentiment on the subject. He directs the building to be erected between limits that exclude the location at Christian and Broad streets. But it is said he afterwards bought a lot there, and verbally expressed a preference for it; this is possible, but certainly he never fixed it as the site for the Library, by any express testamentary direction. A man's will is his last word; it takes effect from his death; and Dr. Rush's last will contains no such crowning eccentricity as the banishment of Benjamin Franklin's library to the absurd location suggested. Here, then, is the main point to which the attention of the stockholders should be directed at their meeting. Let them not hastily accept a bequest trammeled with any condition that does not appear on the face of the will. If the limits laid down in it by Dr. Rush, and approved by public opinion, are to be widened, let it not be by any too hasty consent of the Library company. It has been the recipient of many contributions and donations from other sources that were intended to subserve public convenience. These certainly ought not to be consigned to the "Tomb of the Capulets."

If the discretion vested in the executor is to determine the question, it would be doing injustice to one of our most esteemed and respected citizens, to suppose that he wished to exercise this discretion adversely to the general interest and the general wish. Only the peremptory directions of the will would justify this. But, as we have said, the only peremptory direction in the will, on this subject, positively excludes the Christian street location. Dr. Rush says very sensibly in his will, dated 20th of February, 1860, that the lot shall be "situated between Fourth and Fifteenth, and Spruce and Race streets." But this, it is alleged, is modified by the following language in a codicil, dated April 18, 1867: "I authorize and allow my executor, under a broad and thoughtful foresight, to increase the size of the lot, and select any situation he may deem most expedient." If this discretion is not restricted by the limits named by Dr. Rush, it seems quite as untrammeled by any required deference to his verbal suggestions, beyond the weight they may seem entitled to. We advert to these matters, because they are of general public interest, and now is the time for them to be considered and agitated. No discretion can be intelligently exercised on a public question without public discussion. We hope there will be a full one before we are forced to bid a long farewell to the Philadelphia Library.

JESDAY, JUNE 30, 1869.

DR. RUSH'S BEQUEST TO THE PHILADELPHIA LIBRARY COMPANY—MEETING OF THE STOCKHOLDERS YESTERDAY, AT NOON—THE QUESTION OF ACCEPTANCE POSTPONED.—Yesterday, at noon, a very large meeting of the stockholders of the Philadelphia Library Company was held at the Library building, at the corner of Fifth and Library streets. The object of this meeting was to consider the propriety of accepting the bequest of $1,000,000 made by the late Dr. James Rush to the company, for the purpose of establishing what is to be termed "The Ridgway Branch of the Philadelphia Library." The importance of such an assembly as this was well understood, and the most lively interest and earnest attention was paid to all the proceedings.

Judge Sharswood was selected as chairman of the meeting.

Mr. William E. Whitman was appointed secretary.

After the latter had read the call for the meeting, Peter McCall, Esq., inquired whether a quorum was present. He stated that, under the law, one quarter of the stockholders constituted a quorum, and as they (the stockholders) numbered 969 members, 243 would be necessary for the transaction of business. It was mentioned that one stockholder present represented by proxy 183 votes.

He moved that tellers be appointed, which was agreed to, and Messrs. William Neal and James S. Biddle were selected.

The tellers reported a quorum present, and the President announced that he was ready to entertain any motion.

Mr. McCall then said that the Board of Directors of the Philadelphia Library Company had not been able to come to any conclusion as to what advice to give the stockholders in the premises; whether it would be advisable to accept or reject the provisions of the will. The board asked that further time be granted to consider the matter. Mr. McCall thought that there should be a general expression of opinion on the subject, and the entire matter should be fully considered.

He said that Mr. Williams was authorized to select a piece of ground between Fourth and Fifteenth streets, and Spruce and Race, and erect a fire-proof building, and as soon as said building is completed, then Mr. Williams must convey the same to the Philadelphia Library Company, if they decide to accept the same. Mr. McCall then read the provisions of the will, and particularly that portion of the codicil which reads as follows:

In trust, to select and purchase a lot of ground not less than one hundred and fifty feet square, situate between Fourth and Fifteenth and Spruce and Race streets, in the city of Philadelphia, and thereon to erect a fire-proof building sufficiently large to accommodate and contain all the books of the Library Company of Philadelphia (whose library is now at the corner of Fifth and Library streets), and to provide for its future extension according to plans, directions, and specifications which I shall hereafter make or give; but if I should not make or leave any such plans, directions, or specifications, then to erect the same according to his best judgment and to the views which I have expressed to him. It is my wish that this building should be exceedingly substantial, completely fire-proof, without any large, lofty, or merely ornamental halls or lecture-rooms; the whole interior to be divided in such a way as to contain the greatest number of books, to be well lighted, and so arranged as to be of easy and convenient access.

And upon this further trust, as soon as this building is completed and ready for occupation, then in trust to convey the same, with the lot of ground whereon it is erected, unto "The Library Company of Philadelphia" aforsaid, and their successors, for the uses and purposes of their library, and for no other use or purpose whatever.

Mr. McCall stated that he understood that Mr. Williams, under the request of Dr. Rush, would erect a building on Broad street, between Carpenter and Christian streets, and that the stockholders must confine themselves to and make up their minds to accept the locality for the building. He did not think it necessary to accept the building until it was completed, and he thought there could be no legal acceptance until it was completed. He thought that all the stockholders could do now was to agree to accept the building when completed.

Taking everything into consideration, the Board of Directors have come to the conclusion to advise the stockholders to adopt a middle course, and to postpone for the present any action in relation to the acceptance or rejection of the bequest. The Directors do not feel that they have sufficient light to warrant them in recommending any particular action just now; and when it is considered that "it is the first step that costs," the Directors would like first to know where that step would place them.

Mr. McCall then read the following resolution:

Resolved, That the Directors of the Library Company be and are hereby authorized to accept the bequests and devises in Dr. Rush's will, if and when they shall deem it advisable so to do, and be authorized to procure any legislation necessary for the purpose.

General Stokes thought that the executor of the will, Mr. Williams, should know at once whether the building will be for the use of the Philadelphia Library or the Ridgway Library. If the building is erected for the Ridgway Library, it may be totally unfit for the Philadelphia Library's use. He remarked that the meeting had been called to act, and if it failed, it might be construed into neglect, and Mr. Williams may proceed at once with the Ridgway Library.

He proposed an amendment to Mr. McCall's resolution, as follows:

Resolved, That the stockholders of the Library Company of Philadelphia, have heard with pleasure of the munificent bequest of the late Dr. James Rush.

That they desire that the Directors of the Library Company of Philadelphia shall signify to Henry J. Williams, Esq., their acceptance of the same, with, however, the expression of the wish that, if it be within the power of Mr. Williams, the new building shall be placed within the limits first designated in the will of Dr. Rush.

Mr. Henry J. Williams, the executor, declared that he would feel perfectly satisfied whether the legacy was accepted or rejected. He had been a member of the Philadelphia Library Company for thirty-five years, and had never seen any trouble at any of the meetings, and hoped there would be none at this. If the Philadelphia Library Company chooses to reject the bequest, he would be left to manage the trust himself, and alone. He thought the Board had the right to accept at once, and if they did so he desired to confer with the members of the Board at once. He remarked he must pay a tax of $50,000 within three months unless certain action was taken by the Philadelphia Library Company.

Mr. Williams stated that Dr. Rush gave him option regarding the character of stone to be used, but he desired to confer with the Board of Directors in regard to its selection. He hoped the Board of Directors would accept and give him aid, and if they did not he would proceed at once and erect the building at Broad and Christian streets for the use of the Ridgway Library. Mr. Williams stated that he went from one end of Broad street to the other to select a lot, and on reporting to Dr. Rush a number of locations, he fixed upon the one at Broad and Christian streets.

Addresses were also made by Frederick Fraley, Mr. Tilghman, Mr. Clay and Judge Cadwalader. The latter in forcible remarks advocated the acceptance of the trust.

Judge Hare at this juncture read the following opinion:

We are of the opinion that the time for the Library Company to accept the devise under the will of Dr. James Rush has not aarived, until the executor shall have completed a building and tendered a conveyance, the Company could do no more than to agree to accept at a future time. And we think such an agreement should not be made until the real position of the affairs and the plans of the executors are better ascertained and the consequences considered.

We think, therefore, that it is expedient to postpone, for the present at least, any action by the Company in reference to the will, other than the observance of those provisions which they are required to observe, to avoid disabling themselves from accepting in accordance with the terms of the will.

Mr. Tilghman offered the following amendment to the proceeding resolution:

Resolved, 1. That it is inexpedient at this time to take any action upon the question of accepting the devises and bequests to this Company contained in the will of the late Dr. James Rush, upon the conditions therein expressed.

2. That whenever, in the opinion of counsel, the proper time shall have arrived for action upon such question, the Directors are hereby requested to submit it to a meeting of the stockholders specially called for its consideration.

3. That until such question be decided, no new shares of stock in the Company shall be issued.

Mr. Frederick Fraley, after some strong remarks regarding the non-acceptance of the bequest, offered a resolution that all the resolutions offered be referred to a committee, to consist of six stockholders and six directors of the Philadelphia Library, and that the whole matter be postponed for the present, and this committee report at a meeting to be held on the first Tuesday in October. Carried.

The meeting then adjourned.

The following is the opinion of Judge Strong, in reply to certain interrogatories put by Mr. Williams:

Henry J. Williams, Esq.,

DEAR SIR: I have examined the Will of Dr. Rush at your request, and I am now prepared to answer the questions you propose:

First. I am of opinion that until "The Philadelphia Library Company" shall have accepted the provisions of the will respecting the devise for their benefit, they have no control over it, or over your action as Trustee. It is indeed desirable that you should know at an early day whether the Library Company intend to take advantage of the provisions of the will in their favor, for that knowledge might properly have some influence upon your action. If the building to be erected is not to be accepted on the conditions presented, and if it shall be your duty to found another library it may well be considered whether a smaller sum should not be devoted to the building, and a larger to the endowment. But until the provisions of the will have been accepted by the Library Company, they have no right to interfere with the discretion vested in you as trustee.

Second. I am also of opinion that the direction given on the fourth printed page of the will, to erect the building and provide for its extension according to plans, directions and specifications, the testator should therefore make or give, or, in case he should make or leave no such plans, &c., according to your best judgment, and to the views connection with the fourth section of the second which had been expressed to you by him, taken in codicil, fully justifies you in following the directions given to you verbally within a month of Dr. Rush's decease. I assume, of course, that those directions relate only to the mode of erection, or to the place for erecting the building. I think an uncontrolled discretion is vested in you in these particulars. While I am not prepared to say that you are *legally bound* by any verbal directions given by Dr. Rush within a month of his death, you are at liberty to follow them, and, considering the language of the will, they are entitled to weight in your consideration.

Third. The surplus remaining after the building shall have been erected and paid for, and after a sufficient fund shall have been set apart for the annuities, will belong, under the will, to the Library Company, if they accept the gift under the conditions prescribed. After reflection, I am of opinion that you are not required to expend the whole estate (except the annuity fund) in erecting the building. The annuities may not fall in for years, and, if they do not, there will be no fund for current expenses and none for the increase of the library, unless a portion of the estate remain unexpended beyond the annuity fund.

Fourth. I have not before me the contract for the purchase of the lots on Christian and Carpenter streets, but if the contract for the purchase was made by the direction of Dr. Rush, and was signed by the vendor, and a payment was made on account, it is binding upon you as executor, and it is your duty to complete the purchase and pay the consideration. I think such is your legal liability, but if not, certainly you are justified under the will in such a course, especially if you think it expedient.

Fifth. The plan of Dr. Rush was to establish a branch of the Philadelphia Library, not to extinguish it, or to merge its existence in a new institution. It is not, I think, made a condition of the devise to the Company that they shall not retain their present building, or procure some other for the convenience of the members and for the reception of such books as are intended to be excluded from the Branch Library. Of course, such other buildings cannot be placed upon the lot upon which the building for the "Branch" shall be erected. Nor can the funds derived from Dr. Rush's estate be appropriated for any other purposes than those specified in his will. They cannot be used for the purchase or erection of such other buildings, or for the purchase of such books, or for the current expenses of that part of the Library of the Company

Sixth. I have already said that the will confides to you a most absolute discretion in the choice of the lot for the building. I am confident a court of equity does not interfere with a discretion reposed, except in cases of clear abuse, when the court can conclude that the donee of a power is acting in fraud of it. But when, as in your case, the trustee acts in accordance with his own best judgment, and in so doing follows the positive directions of the testator, it would be altogether unprecedented for a court to interfere and substitute its discretion for that invoked by the will. The only objection now made to the lot at Christian and Carpenter is, so far as I know, that it is so remote from the situation which the Library Company thinks most suitable. It was not their judgment, however, upon which Dr. Rush relied. And it is by no means certain that the lot will not prove within a few years, more conveniently located than any other. The institution is intended to be lasting; designated not merely for the present, but for the future.

I am, very respectfully, yours,

W. STRONG.

June 15, 1869.

In a note added to this opinion, Judge Strong says to the executor, relative to the lot between Christian and Carpenter streets: "I am of the opinion that it is your duty to complete the purchase."

MEETING OF THE COMPANY.

At a meeting of the Library Company held June 29th, 1869, to consider the question of accepting the legacy and devise of the late Doctor JAMES RUSH, on the conditions therein contained, Judge SHARSWOOD was called to the Chair, and WILLIAM E. WHITMAN, Esq., was appointed Secretary.

Messrs. JAMES S. BIDDLE and WILLIAM NEAL were appointed Tellers, who reported that a quorum was present in accordance with the Charter.

PETER MCCALL, Esq., offered the following Resolution :—

Resolved; That the Directors of the Library Company be and they are hereby authorized to accept the bequests and devises in Dr. Rush's will, if and when they shall deem it advisable so to do, and be authorized to procure any legislation necessary for the purpose.

Gen. WILLIAM A. STOKES moved to strike out all after the word *Resolved* and to substitute the following :—

"That the Stockholders of the Library Company of Philadelphia have heard with pleasure of the munificent bequest of the late Dr. James Rush.

That they desire that the Directors of the Library Company of Philadelphia shall signify to Henry J. Williams, Esq., their acceptance of the same, with, however, the expression of the wish that, if it be within the power of Mr. Williams, the new building shall be placed within the limits first designated in the will of Dr. Rush."

WILLIAM M. TILGHMAN, Esq. moved to amend the amendment by striking out all after the word *Resolved* and substituting the following :—

1. That it is inexpedient at this time to take any action upon the question of accepting the devises and bequests to this Company, contained in the will of the late Dr. James Rush, upon the conditions therein expressed.
2. That whenever, in the opinion of counsel, the proper time shall have arrived for action upon such question, the Directors are hereby requested to submit it to a meeting of the stockholders specially called for its consideration.
3. That until such question be decided, no new shares of stock in the Company shall be issued.

A general debate ensued, and finally, on motion of FREDERICK FRALEY, Esq., it was resolved to postpone, for the present, the

consideration of the foregoing Resolutions, and to refer them to a Committee, to be appointed by the chair, composed of six Members and six Directors, to report at an adjourned meeting.

The Chair appointed FREDERICK FRALEY, EDWARD KING, JOSEPH CARSON, WILLIAM W. LONGSTRETH, BENJAMIN V. MARSH, and WILLIAM P. TATHAM, on the part of the Stockholders, and PETER MCCALL, J. I. CLARK HARE, GEORGE W. NORRIS, S. MORRIS WALN, DAVID LEWIS, and HENRY WHARTON, on the part of the Directors.

On motion it was Resolved, that when this meeting adjourn, it be to meet on the first Tuesday in October, at 12 M. at the Library.

Adjourned to October 5th, 1869.

WILLIAM E. WHITMAN,
Secretary.

NOTICE.

On and after July 1, 1869, the Library will be open from 9 A. M. to 5 P. M.

By order of the Directors.

WM. E. WHITMAN,
Secretary.

CITY AFFAIRS.

THE BEQUEST TO THE PHILADELPHIA LIBRARY BY THE LATE DOCTOR RUSH—*Shall it be accepted?*—The disposal of his estate by the late Dr. Rush to the purposes of the Philadelphia Library Company has been a subject of comment ever since the death of the testator. The location in Christian street of the library that he proposed to form is looked upon as entirely too remote for the visits of the class of people it is designed to benefit, and various provisions of the will impose conditions and restrictions that many stockholders of the library are unwilling to entertain. There are not a few of these gentlemen who advocate the entire rejection of the bequest.

A largely attended meeting of these stockholders was held yesterday noon at the library building. The immediate business before the meeting was by a vote of the stockholders to either accept or reject the provisions of the will, locating the branch of the Philadelphia Library Company on a lot on south Broad street, bounded on the south by Carpenter street, north by Christian street, and on the west by Thirteenth s reet.

Judge Sharswood was selected as chairman, and Mr. William E. Whitman as secretary.

Mr. Whitman read the call of the meeting, after which Peter McCall asked whether a quorum was present. He stated that under the law one-quarter of the stockholders constituted a quorum, and as they (the stockholders) numbered 969 members, 83 would be necessary for the transaction of business. It was mentioned that one stockholder present represented by proxy 183 votes.

Messrs. William Neal and James Biddle were selected tellers. They reported a quorum present, and the president announced that he was ready to entertain any motion.

Peter McCall then spoke on behalf of the board of directors of the Philadelphia Library Company. The board have not been able to come to any conclusion whether it would be advisable to accept or reject the provisions of the will. They asked further time to consider the matter. The speaker desired a general expression of opinion on the subject. He said that Mr. Williams was authorized to select a piece of ground between Fourth and Fifteenth streets and Spruce and Race, and erect a fire-proof building, and as soon as said building is completed, then Mr. Williams must convey the same to the Philadelphia Library Company, if they decide to accept it. He read the provisions of the will, and particularly that portion of the codicil which reads as follows:

"In trust, to select and purchase a lot of ground not less than one hundred and fifty feet square, situate between Fourth and Fifteenth and Spruce and Race streets, in the city of Philadelphia, and thereon to erect a fireproof building sufficiently large to accommodate and contain all the books of the Library Company of Philadelphia (whose library is now at the corner of Fifth and Library streets), and to provide for its future extension according to plans, directions and specifications which I shall hereafter make or give; but if I should not make or leave any such plans, directions, or specifications, then to erect the same according to his best judgment, and to the views which I have expressed to him. It is my wish that this building should be exceedingly substantial, completely fireproof, without any large, lofty, or merely ornamental halls or lecture-rooms; the whole interior to be divided in such a way as to contain the greatest number of books, to be well lighted, and so arranged as to be of easy and convenient access.

"And upon this further trust, so soon as this building is completed and ready for occupation, then in trust to convey the same, with the lot of ground whereon it is erected, unto 'The Library Company of Philadelphia' aforesaid, and their successors, for the uses and purposes of their library, and for no other use or purpose whatever."

Mr. McCall understood that Mr. Williams, under the bequest of Dr. Rush, would erect a building on Broad street between Carpenter and Christian streets, and the stockholders must confine themselves to and make up their minds to accept that locality for the building. He did not think it necessary to accept the building until it was completed, and he thought there could be no legal acceptance until it was completed. He thought that all the stockholders could do now was to agree to accept the building when completed.

Taking everything into consideration, the board of directors have come to the conclusion to advise the stockholders to adopt a middle course, and to postpone for the present any action in relation to the acceptance or rejection of the bequest. The directors do not feel that they have sufficient light to warrant them in recommending any particular action just now; and when it is considered that "it is the first step that costs," the directors would like to know where that step would place them.

Mr. McCall then read the following resolution:

Resolved, That the directors of the Library Company be and are hereby authorized to accept the bequests and devises in Dr. Rush's will, if and when they shall deem it advisable so to do, and be authorized to procure any legislation necessary for the purpose.

General Stokes stated that Dr. Rush's will provides for the endowment of the Philadelphia Library. On the neglect of the Library Company to accept the provisions of the will, a separate library company, to be called the Ridgway Library, will be at once formed. Now the question occurs whether, if no action is taken now, the Ridgway Library will be formed, and the Philadelphia Library Company be debarred from all benefits of the will? General Stokes thought the executor of the will, Mr. Williams, should know at once whether the building will be for the use of the Philadelphia Library or the Ridgway Library. If the building is erected for the Ridgway Library, it may be totally unfit for the Philadelphia Library's use. He remarked that the meeting had been called to act, and if it fails it may be construed into neglect, and Mr. Williams may proceed at once with the Ridgway Library.

He proposed an amendment to Mr. McCall's resolution, as follows:

Resolved, That the stockholders of the Library Company of Philadelphia have heard with pleasure of the munificent bequest of the late Dr. James Rush.

That they desire that the directors of the Library Company of Philadelphia shall signify to Henry J. Williams, Esq., their acceptance of the same, with, however, the expression of the wish that, if it be within the power of Mr. Williams, the new building shall be placed within the limits first designated in the will of Dr. Rush.

Mr. Henry J. Williams then rose and said he had no desire to influence the action of the meeting either one way or the other. He would feel perfectly satisfied whether the legacy was accepted or rejected. He had been a member of the Philadelphia Library Company for thirty-five years, and had never seen any trouble at any of the meetings, and hoped there would be none at this. If the Philadelphia Library Company chooses to reject the bequest, he would be left to manage the trust himself, and alone. He thought the board had the right to accept at once, and if they did so, he desired to confer with the members of the board at once. He remarked he must pay a tax of $50,000 within three months unless certain action was taken by the Philadelphia Library Company.

Mr. Williams stated that Dr. Rush gave him option regarding the character of stone to be used, but he desired to confer with the board of directors in regard to its selection. He hoped the board of directors would accept and give him aid, and if they did not he would proceed at once and erect the building at Broad and Christian streets, for the use of the Ridgway Library. Mr. Williams stated that he went from one end of Broad street to the other to select a lot, and on reporting to Dr. Rush a number of locations, he fixed upon the one at Broad and Christian streets.

Remarks were then made by Frederick Fraley, Mr. Tilghman, Mr. Clay, Judge Cadwalader and others, and Judge Hare read the following opinion:

"We are of opinion that the time for the Library Company to accept the devise under the will of Dr. James Rush has not arrived; until the executor shall have completed a building and tendered a conveyance the Company could do no more than to agree to accept at a future time. And we think such an agreement should not be made until the real position of the affairs and the plan of the executors are better understood and the consequences considered."

"We think, therefore, that it is expedient to postpone, for the present at least, any action by the company in reference to the will other than the observance of those provisions which they are required to observe to avoid disabling themselves from accepting in accordance with the terms of the will."

Mr. Tilghman offered the following amendment to the preceding resolution:

Resolved, That it is inexpedient at this time to take any action upon the question of accepting the devises and bequests to this company contained in the will of the late Dr. James Rush, upon the conditions therein expressed.

Resolved, That whenever, in the opinion of counsel, the proper time shall have arrived for action upon such question, the directors are hereby requested to submit it to a meeting of the stockholders specially called for its consideration.

Resolved, That until such question be decided no new shares of stock in the company shall be issued.

Mr. Frederick Fraley offered a resolution that all the resolutions offered be referred to a committee, to consist of six stockholders and six directors of the Philadelphia Library, and that the whole matter be postponed for the present, and this committee report at a meeting to be held on the first Tuesday in October. Carried.

The meeting then adjourned.

JOTTINGS.—Mayor Fox has

CITY BULLETIN.

THE RUSH BEQUEST—MEETING OF THE PHILADELPHIA LIBRARY COMPANY.—A meeting of the Philadelphia Library Company was held at noon to-day in the Library Building, N. E. corner of Fifth and Library streets.

Hon. Judge Sharswood was called to the chair.

A report from the majority of the committee of twelve was presented by the chairman, Mr. Fred. Fraley which embodied the following resolutions:

Resolved, That the Stockholders of the Philadelphia Library Company do hereby accept the legacy of Dr. James Rush according to the terms expressed in his Will.

Resolved, That so much of the present collection of books and other property of the Company as may by the Directors be deemed expedient, shall be retained in the present or some other central position for general use and circulation.

Resolved, That a Committee to consist of three Stockholders and three Directors shall be appointed for the purpose of consulting and advising with the Executor of Dr. Rush in carrying out the provisions of the Will, in procuring such legislation as may be needed, and also for carrying into effect the second resolution, by taking measures for securing the erection of a fire-proof building for the reception of those parts of the library so to be retained at such time and in such place as said Committee may determine.

Resolved, That a copy of the foregoing resolutions be transmitted to Henry J. Williams, Esq., the Executor of Dr. James Rush, as the acceptance of this Company of the bequest made by his Will, and that the letter transmitting the same shall acknowledge the high appreciation by the Company of the confidence reposed in them by Dr. Rush, and of their cordial willingness to unite in carrying out, in the most beneficial way, his philanthropic intentions.

Upon the conclusion of the reading of the report, the following was offered and read:

To the Philadelphia Library Company—The undersigned, a member of the committee of twelve, feels compelled to declare his dissent from the reasonings and conclusions of the report signed by the chairman.

He believes the proper course for the Library Company would be to accept and comply with the preliminary conditions imposed by Dr. Rush's will and to postpone further action until the proper time for it under the provisions of the will.

PHILADELPHIA, Oct. 5th, 1869. W. P. TATHAM.

Mr. Tilghman was opposed to the acceptance of the report; he was earnestly opposed to the removal of a portion of the Library to Broad and Christian streets. If the Library was to be moved at all let it all be removed to the proposed new building. He ridiculed the idea of placing a certain portion of the books in the new building and keeping another portion in a building on the present site. Referring to the proposition of keeping up a line of communication with the two buildings by means of telegraph, he considered it simply ridiculous. As affairs stood now, mistakes were of frequent occurrence. If the plan proposed was adopted, they would double in frequency. He knew he was leading a forlorn hope in making opposition to the report, but he felt it to be his bounden duty so to do.

Mr. Fraley, in reply, stated that the Committee had taken the will as it stood printed, and from it it was manifest that by the terms of the will the Philadelphia Library Company was to be constituted the trustees of the residuary estate of Dr. Rush, and it was their duty so to move in the matter as to enable the executor of Dr. Rush's will to carry out its provisions. He regretted that Dr. Rush had not chosen his own mansion house for library purposes, but, since he had selected the site at Broad and Carpenter streets, it was their duty to accept it. He knew that it was considered an out of the way location, but he reminded his hearers that there was a time when Sixth and Chestnut streets was considered too remote a place for the Library building. The State of Pennsylvania had at one time offered to the Library Company a site at Sixth and Chestnut streets, which was rejected for the reason stated. Although he did not suppose that such rapid changes would follow as have been witnessed, yet he did think that the time would come when the proposed site would not be considered so remote or distant. He considered that in carrying out honestly and fairly the plan devised by the committee they would be doing the best thing for the fulfilment of Dr. Rush's intentions, the best thing for the city of Philadelphia, and the best thing for the Library Company.

Henry M. Phillips, Esq., after an elaborate speech, offered the following as an amendment:

Resolved, That the Stockholders of the Philadelphia Library Company do hereby accept the legacy of Dr. James Rush according to the terms expressed in his will; *provided*, that so much of the present collection of books and other property of the Company as may by the Directors be deemed expedient shall be retained in the present or some other central position for general use and circulation.

Mr. McMurtrie offered the following as an amendment to the amendment:

In the opinion of the stockholders the time when they can be asked to accept is that pointed out by the will—when the building is completed and the liabilities which will be assumed can be ascertained, and measured with the means of performing them.

The vote upon the amendment offered by Mr. McMurtrie was taken, and a division called for, which resulted in a vote of 31 for and 32 against it. The motion was lost. The vote upon Mr. Phillips's amendment was next taken, and resulted in a vote of 28 for and 28 against—it being a tie, the President cast the deciding vote against the motion and it was lost.

A motion was then made to adjourn and a vote taken which resulted in 33 ayes and 29 nays. The President did not announce the motion as carried, and ruled that another vote should be taken.

Messrs. Tilghman and Fraley were appointed tellers. They announced as the result 31 for adjournment, and 30 against it.

The question was then raised as to whether the proxies of certain stockholders should be allowed to vote, and the President ruled that such a course was allowable.

THE PHILADELPHIA LIBRARY.

Presentation of the Report of the Committee Recommending the Acceptance of Dr. Rush's Bequest.

At noon to-day the stockholders of the Philadelphia Library Company met in the Library building to receive the report of the special committee appointed at the last meeting to report upon the advisability of accepting the bequest of Dr. Rush.

The meeting was called to order punctually at the time named by Judge Sharswood, chairman. Messrs. Tilghman and Hutchinson were appointed tellers, to see if a majority of the stockholders were present. They reported that Mr. Smith, librarian, held proxies for 225 members, and that more than the 240 necessary to constitute a quorum were present.

The minutes of the previous meeting were read and approved. Frederick Fraley, Esq., chairman, presented and read the report of the special committee, which has been already fully published. It concludes with the following resolutions:—

Resolved, That the stockholders of the Philadelphia Library Company do hereby accept the legacy of Dr. James Rush according to the terms expressed in his will.

Resolved, That so much of the present collection of books and other property of the company as may by the directors be deemed expedient shall be retained in the present or some other central position for general use and circulation.

Resolved, That a committee, to consist of three stockholders and three directors, shall be appointed for the purpose of consulting and advising with the executor of Dr. Rush in carrying out the provisions of the will, in procuring such legislation as may be neened, and also for carrying into effect the second resolution, by taking measures for procuring the erection of a fire-proof building for the reception of those parts of the library so to be retained at such time and in such place as said committee may determine.

Resolved, That a copy of the foregoing resolutions be transmitted to Henry J. Williams, Esq., the executor of Dr. James Rush, as the acceptance of this company of the bequest made by his will, and that the letter transmitting the same shall acknowledge the high appreciation by the company of the confidence reposed in them by Dr. Rush, and of their cordial willingness to unite in carrying out, in the most beneficial way, his philanthropic intentions.

Mr. Fraley, on concluding the reading, moved to proceed to the consideration of the report.

Mr. W. P. Tatham, a member of the committee, presented the following minority report:—

To the Philadelphia Library Company:—

The undersigned, member of the Committee of Twelve, feels compelled to declare his dissent from the reasonings and conclusions of the report signed by the chairman. He believes the proper course for the Library Company would be to accept and comply with the preliminary conditions imposed by Dr. Rush's will, and to postpone further action until the proper time for it under the provisions of the will. W. F. TATHAM.

Philadelphia, Oct. 5, 1869.

At the suggestion of Col. Biddle it was understood that the whole report of the committee would be in order for discussion.

Wm. M. Tilghman opposed the action of the committee in proposing the placing of a portion of their library in the building to be erected at Broad and Christian streets. Such a course he did not believe would meet the intention of Dr. Rush, who had designed that the entire Philadelphia Library should be there deposited as a lasting monument to his liberal bequest. He favored the rejection of the entire bequest, as vastly better for the requirements of the testator and for the Philadelphia Library itself. The design of Dr. Rush, in his judgment, was to found a library for students, for men of letters, to whom a central location was not essential. The question, therefore, to be decided was, whether the library company would move its library to that neighborhood, and keep it there forever, for the mere consideration of being stored in a fire-proof building. The alternative of dividing the present library into two portions, nearly two miles apart, was unworthy of consideration, as it would destroy its value for reference, and would violate the fundamental designs of the testator.

Mr. Fred. Fraley thought it right to reply in a few words upon the subject. The committee were aware that great discrepancies of opinion existed, and that a plan to harmonize these discrepancies was necessary. The committee had endeavored to consider the entire subject, at a great expense of time, and after considering all phases of opinion, they had taken the will of Dr. Rush and framed the present report. It was evident from his will that Dr. Rush did intend the Philadelphia Library Company to become the residuary legatee of his estate, if they would accept the bequest. The first consideration of the committee was whether Dr. Williams should be instructed to erect a building under the auspices of the Philadelphia Library Company, or for the Ridgway branch solely. Nowhere had Dr. Rush required the entire library to be removed to the new building; and the plan of the committee would secure all the testator had designed to secure by his money—the great students' library alluded to. If the bequest was rejected, the result would be that all the valuable books at present in this library would have to be duplicated in the Ridgway branch, at an expenditure that would give no additional value.

He regretted for himself the location at Broad and Carpenter streets, and would have preferred that the late old family residence of Dr. Rush had been given for that purpose, but the former lot had been purchased by the testator himself, and had to be accepted if the bequest was accepted. Years ago Sixth and Chesnut streets was considered so inconvenient a location, that the Philadelphia Library Company rejected the offer of the State to present it a lot equivalent to that now occupied by the Philosophical Society. In time to come the growth of the city would make Broad and Carpenter streets far more central than at present, though, had Walnut or Chesnut street been selected, the choice would be more satisfactory.

In his judgment, no inconvenience would result from the proposed division of the library. A place of convenient access was needed for current literature of the day, that is consulted at its publication, and then becomes of little value. This need not be larger than the present space afforded, and thus the valuable works of reference would be stored where they could be uninterruptedly and studiously consulted.

Under the will the Library did not possess the right to use any portion of the bequest for its own expenses, or for adding to its own collection of works. Thus, in case of a subsequent separation, each library would be able to claim its own peculiar property. It was with this view that a fire-proof building was recommended on the present location, to be sustained by the Philadelphia Library; and in case the stockholders should prefer, at the erection of the building on Broad street several years hence, to remove the entire Philadelphia Library there, this structure would be valuable to be leased as a business stand and produce an unfailing revenue.

In all respects the plan of the committee recommended itself to his approval. He would scorn to evade any of the provisions of Dr. Rush's will, but the proposed plan merely endeavored to harmonize the varying opinions of the testator, and to secure the best results for the students and citizens of Philadelphia.

Henry M. Phillips, Jr., stated it was very evident the committee would never have reported in favor of unqualifiedly accepting the bequest without the qualifying provisions embodied in the report, yet he judged it was very questionable whether the Philadelphia Library Company would be sustained by a court of equity in the division of its books as proposed. It was not necessary for the bequest to be accepted at once, and he would have the executor allowed to erect the building as projected by the trust. By that time he trusted the stockholders would have received such a new spirit of energy and vitality that they would be able to start the present library on a new foundation and would escape the disgraceful anomaly of limiting the number of its stockholders to less than one thousand forever, when its original purpose was to extend its uses to all who wished to accept. To meet the legal objection that might possibly rise hereafter, he would amend the first resolution by inserting the second as a proviso, as follows:—

Resolved, That the stockholders of the Philadelphia Library Company do hereby accept the legacy of Dr. James Rush according to the terms expressed in his will; provided, that so much of the present collection of books and other property of the company as may by the Directors be deemed expedient, shall be retained in the present or some other central position for general use and circulation.

THIRTEENTH WARD OFFICIAL.—Dennis Ma-

To the Stockholders of the

Philadelphia Library Company.

The Committee appointed on the subject of the bequest of the late Dr. James Rush, respectfully report,

That without going into the consideration of points about which there is great diversity of opinion among the Stockholders, they have endeavored to reach conclusions that would prove satisfactory.

To this end, and in order to guide them in their labors, they by correspondence and conference with Henry J. Williams, Esq., the Executor of Dr. Rush, have sought for such information as would enable them to determine accurately what were his views as to the administration of so much of the trust as is placed in his charge, and what estate and income would probably be left to be applied by the Library Company when they should come to act as Trustee.

From Mr. Williams they have obtained the following statements. First, that the present cash value of the estate as appraised by Mr. Thomas Craven, is one million and sixty-seven thousand dollars. Second, that the net annual income, not including any rental for the mansion on Chestnut street (which is valued at one hundred and forty thousand dollars), is a little above forty thousand dollars. Third, that the site selected and purchased for the proposed Library Building, is the lot of ground on Broad street, bounded on the north by Christian street, on the south by Carpenter street, and on the east by Thirteenth street; being 300 feet front on Broad

street, by 527 feet deep on Christian and Carpenter streets. Fourth, that the building will be of the Greek–Doric order of architecture, about 80 to 100 feet front by 140 to 160 feet in depth, with wings of 20 to 30 feet in width, and an opening in the centre of the edifice of 20 to 25 feet in width, for light and air.

One of the main points on the part of the Committee, was to ascertain from Mr. Williams whether the question of the site was so open to discussion as that it might be changed to a different location within the limits originally selected by Dr. Rush.

His reply as to a change of site is emphatically in the negative. He states that the lot was bought for the purpose, by Dr. Rush himself, for $130,000, and that he feels bound in consequence thereof, to place the building thereon in order to comply with the directions of Dr. Rush.

He states further, that his own judgment as to the selected site, concurs with that of the testator, and therefore declines to entertain any proposition for a change.

As to the building itself, he says: that while the measurements were suggested to him by Dr. Rush, and accord with his present views, yet he is at liberty to change them, and will freely do so, if, in his judgment, it shall be necessary. The material of the building will be either granite or white Ohio sandstone.

By the terms of the Will, very large discretionary powers are given to Mr. Williams, and from his well-known character and long connection with the Library Company as a Director, it may safely be concluded that if the Company accept the bequest, they will be met in a liberal spirit.

The munificent provision made by Dr. Rush for the formation of a great public library, the confidence reposed in

the Company by him, in making them the Trustee of his residuary estate, and the fact that a fire-proof building for the reception of its literary treasures will be secured, should all combine to procure our co-operation to carry the plans of the testator into effect.

At present the executor considers himself bound to regard the Company as strangers, because he is not advised of their acceptance of the provision of the Will, or indeed of any such action on their part as would enable him to determine whether he shall erect a building suited for them and for the Ridgway branch of the Philadelphia Library, or whether he shall found and endow the Ridgway Library.

After a careful consideration of the whole case, the Committee think that in fairness to the Executor, the Company should decide at once whether they will accept or reject the bequest, and thereby relieve him from all embarrassment so far as they are concerned.

If the Company accept, they will at once place themselves in such relations with the Executor as to be able to influence to the fullest extent practicable, all his plans, and thus secure the erection of a building adapted for their use and the reservation of as large a fund for the purchase of books and the payment of current expenses, as the terms of the Will may permit.

It must be borne in mind that the views of the munificent testator were not limited to the present time, but are to extend over all time, as independently of the provision for the lot, building, expenses, &c.; all the principal of the annuities as it falls in, will become available for the purposes of the library.

It cannot be doubted that our Company is better fitted than any other corporation or any new one that might be

created, for the accomplishment of what Dr. Rush had at heart.

Our collection of the kind of books he favored is already large and will form a good foundation on which to build hereafter, and the modifications of our charter which he insists on as preliminary to clothing us with the care of his estate, are in the main judicious.

Nor do the Committee perceive any difficulty in making arrangements for the convenience of the Stockholders and the public, in keeping up a library on our present site or one more generally accessible, of the character used for circulation and for ordinary use in a reading-room.

Indeed the testator, by directing that his money shall be applied to the purchase of books for the Ridgway branch of the Library, has left to the discretion of the Company the disposition of its other property in such way as may be most beneficial to the public and the Stockholders.

The Committee, therefore, see no difficulty in carrying out the plan they propose for the adoption of the Stockholders, which in their judgment will be in harmony with the intention of Dr. Rush, as gathered from a fair and liberal construction of his Will, and with other duties and trusts which rest upon the Company; and with which, doubtless, Dr. Rush was quite familiar.

We think it may be assumed with great certainty, that Mr. Williams will be induced by the favorable action of the Company, to adopt such plans and make such arrangements as will put up the proposed building, at such cost as will leave about $300,000 for the payment of the annuities and the constitution of a fund for expenses and purchase of books.

When the annuities have all fallen in, and of course this will be a work of time, the capital of the fund will be at least

the amount above named, but it must be recollected that the estate consists mainly of real property, situated in the City of Philadelphia, and daily increasing in value by the growth of the City, so that a provision of $300,000, as the foundation, will soon be largely augmented.

Dr. Rush has undoubtedly had this in view when he provided so strictly against any hasty alienations of his real estate.

Everything, therefore, concurs in the judgment of the Committee, to make it advisable for the Company to become the Trustee of the estate.

The plan of the Committee is, First—That the Library Company shall become, by the acceptance of the bequest of Dr. Rush, the Trustee of his residuary estate, and apply it to the establishment of the Ridgway branch of the Philadelphia Library, in the building and on the site selected by the Testator and his Executor, in this way securing all the objects of Dr. Rush in a more ample manner than they would be by merely founding and endowing the Ridgway Library and leaving it to be determined in the future, whether it will be proper to place the whole library of the Company in the Ridgway building.

Second—That arrangements shall be made as early as practicable, for the erection of a fire-proof building on our present site or some other equally convenient place, of sufficient size and with such accommodations as will be required for a library such as has been hitherto kept for circulation and for ordinary use in the reading-room.

Third—That a committee shall be appointed for the purpose of consulting and advising with the Executor of Dr. Rush, as to the best and most economical plans for carrying

out the provisions of the Will, and for procuring such legislation as may be needed.

Appropriate resolutions for carrying these views into effect are herewith submitted.

The Committee cannot leave the subject that has been entrusted to them, without recommending also, that in the letter which shall communicate to the Executor of Dr. Rush the action taken by the Company on the munificent bequest made by his Will, the strongest assurances shall be given of the appreciation of the Stockholders of the confidence reposed in them by the Testator, and of their cordial willingness to unite and co-operate with the Executor in securing the most perfect and beneficial execution of the philanthropic intentions of the Testator.

Resolved, That the Stockholders of the Philadelphia Library Company do hereby accept the legacy of Dr. James Rush according to the terms expressed in his Will.

Resolved, That so much of the present collection of books and other property of the Company as may by the Directors be deemed expedient, shall be retained in the present or some other central position for general use and circulation.

Resolved, That a Committee to consist of three Stockholders and three Directors, shall be appointed for the purpose of consulting and advising with the Executor of Dr. Rush in carrying out the provisions of the Will, in procuring such legislation as may be needed, and also for carrying into effect the second resolution, by taking measures for securing the erection of a fire-proof building for the reception of those parts of the library so to be retained at such time and in such place as said Committee may determine.

Resolved, That a copy of the foregoing resolutions be transmitted to Henry J. Williams, Esq., the Executor of Dr.

James Rush, as the acceptance of this Company of the bequest made by his Will, and that the letter transmitting the same shall acknowledge the high appreciation by the Company of the confidence reposed in them by Dr. Rush, and of their cordial willingness to unite in carrying out in the most beneficial way, his philanthropic intentions.

By order and on behalf of the Committee.

FRED. FRALEY,

Chairman.

September 28th, 1869.

RESOLUTIONS

Upon which a Vote of the Members of the LIBRARY COMPANY OF PHILADELPHIA, *will be taken on Tuesday, the 19th of October, 1869, at the Library Rooms, between 10 A. M. and 4 P. M. The Resolutions will be voted on separately.*

Members are requested to write AYE or NO against each resolution as they may prefer to vote.

No. 1.

Resolved, That the Stockholders of the Library Company of Philadelphia do hereby accept the legacy of Dr. James Rush according to the terms expressed in his Will.

No. 2.

Resolved, That so much of the present collection of books and other property of the Company as may by the Directors be deemed expedient, shall be retained in the present or some other central position for general use and circulation.

No. 3.

Resolved, That a Committee to consist of three Stockholders and three Directors, shall be appointed for the purpose of consulting and advising with the Executor of Dr. Rush in carrying out the provisions of the Will, in procuring such legislation as may be needed, and also for carrying into effect the second resolution, by taking measures for securing the erection of a fire-proof building for the reception of those parts of the library so to be retained at such time and in such place as said Committee may determine.

No. 4.

Resolved, That a copy of the foregoing resolutions be transmitted to Henry J. Williams, Esq., the Executor of Dr. James Rush, as the acceptance of this Company of the bequest made by his Will, and that the letter transmittting the same shall acknowledge the high appreciation by the Company of the confidence reposed in them by Dr. Rush, and of their cordial willingness to unite in carrying out in the most beneficial way, his philanthropic intentions.

[The above resolutions are those reported by the Joint Committee of Stockholders and Directors. The following additional resolution is offered by Hon. Henry M. Phillips.]

No. 5.

Resolved, That the acceptance of the Stockholders of the Library Company of Philadelphia is upon the express provision that so much of the present collection of books and other property of the Company as may by the Directors be deemed expedient, shall be retained in the present or some other central position for general use and circulation.

6

THE RUSH BEQUEST.

To the Editor of the Evening Telegraph.

I submit to the consideration of your readers the following objections to the acceptance by the Philadelphia Library Company of the trust offered by the will of the late Dr. Rush:—

1. The counsel consulted by the Directors (Mr. Meredith, Mr. McMurtrie, and Mr. George W. Biddle) say that this is not the proper time for a decision.

2. The Directors, in presenting the subject to the meeting of 29th June, expressed the same opinion.

3. The location chosen by the executor for the new building is altogether unsatisfactory to the members of the company.

4. The whole library must go there, if the spirit of Dr. Rush's will is not to be flagrantly disregarded.

5. No one knows what the financial state of the Trust is even likely to be when handed over to the company. Opinions vary immensely as to the amount of funds which will remain after the building is completed. The will requires all the estate to be spent on the building, except sufficient to secure the annuities. This gives nothing whatever for purchase of books or expenses of supporting the library until one by one the annuities fall in. One thousand hungry heirs eagerly expecting the demise of each survivor of Dr. Rush's family!

6. The condition that the number of members shall never be increased is an odious and aristocratic feature, entirely alien to the spirit in which the library was founded and has been administered. When this amendment of the charter is asked of the Legislature, it will surely meet with opposition.

7. The condition that the library company shall never connect itself with any other body corporate is a very objectionable one. The present Library Company is a combination of the original company with three others, viz. The Amicable, the Association, and the Union. Is it not possible that in the mutation of human affairs it may be desirable for the library company to unite with some other kindred institution. Suppose, for example, that fifty years hence some large hearted, generous, genial philanthropist, having amply provided for the needs of his surviving relations, should by his last will offer us, with that same noble confidence which marks every page of Dr. Rush's will, three millions of dollars to effect a union, say, with the Mercantile or some other library company. We should be powerless. If it be said this is forced supposition, and we are not likely again to find such generous, munificent, self-denying philanthropy as that of the late Dr. Rush, I suppose we must reluctantly assent. But though such qualities are rare indeed, ought we to shut ourselves out from availing ourselves of them in all future time?

8. The condition that the directors shall be of such and such profession, is dictatorial and offensive to our old and honorable corporation.

9. The most outrageous provision in the will, and the one which alone should cause a rejection of the trust, is that which virtually appoints one of the insurance companies of the city a perpetual guardian of the Library Company of Philadelphia. (See page 25 of the will.) That company is enjoined to see that the library company observes all the conditions of the trust, and of course may have a standing committee of their board upon the Rush trust, and claim free access to all the accounts and business of the library company.

Observe, also, that if they can catch the library company tripping, they are to have charge of the fund themselves.

We might continue at much greater length, but these objections seem sufficient to induce, at any rate, delay until we can take our observation, compute our exact position on the chart, and then shape a course which will be safe and prudent. T. B.

Philadelphia, Oct. 11, 1869.

AN INTERESTING PAPER.—Few papers published

J. L. Biddle

To the Members of the Philadelphia Library Company.

Two meetings of the members of the Library Company have been held to consider the expediency of accepting the trust devised by the late Dr. Rush. No satisfactory result has been reached and it is much to be feared from the small attendance of members at these meetings and from the carelessness, with which proxies have been given, that the real question has not been at all apprehended by the great body of the members. Although there are nearly one thousand members, only about sixty-five were present at the last meeting, and about two hundred and twenty-five represented by proxy.

It is evident that notwithstanding the discussions which have taken place, there are great numbers who conceive that the question is, *whether the Library Company will, or will not, accept one million of dollars* bequeathed to it by Dr. Rush. There is no one who takes an interest in the matter who has not met many members who regard this as the sole and very simple problem before us.

We wish therefore to appeal to every member, and earnestly to [illegible] that he will procure from the Librarian a copy of Dr. Rush's will, of the proceedings of the meeting of June 29, and of the fact of the committee appointed at that meeting. It will then appear to the most careless investigator that the vote to be taken on the 19th instant is not at all as to receiving or refusing a million of dollars, but as to receiving or refusing the charge of a Trust complicated in all its provisions, burdensome and grievously offensive in some of its conditions, and moreover, as yet, entirely mysterious as to its promise of future revenue to the company.

But at present we wish to direct attention chiefly to one point, first reading the resolutions which are to be voted on, each one separately:

No. 1.

Resolved, That the Stockholders of the Library Company, of Philadelphia, do hereby accept the legacy of Dr. James Rush, according to the terms expressed in his will.

No. 2.

Resolved, That so much of the present collection of books and other property of the Company as may, by the Directors be deemed expedient, shall be retained in the present or some other central position for general use and circulation.

No. 3.

Resolved, That a committee, to consist of three Stockholders and three Directors, shall be appointed for the purpose of consulting and advising with the Executor of Dr. Rush in carrying out the provisions of the will, in procuring such legislation as may be needed, and also for carrying into effect the second resolution, by taking measures for securing the erection of a fire-proof building for the reception of those parts of the library so to be retained, at such time and in such place as said committee may determine.

No. 4.

Resolved, That a copy of the foregoing resolutions be transmitted to Henry J. Williams, Esq., the Executor of Dr. James Rush, as the acceptance of this Company of the bequest made by his Will, and that the letter transmitting the same shall acknowledge the high appreciation by the Company of the confidence reposed in them by Dr. Rush, and of their cordial willingness to unite in carrying out in the most beneficial way his philanthropic intentions.

[The above resolutions are those reported by the Joint Committee of Stockholders and Directors. The following additional resolution is offered by Hon. Henry M. Phillips.]

No. 5.

Resolved, That the acceptance of the Stockholders of the Library Company of Philadelphia is upon the express provision that so much of the present collection of books and other property of the Company as may by the Directors be deemed expedient, shall be retained in the present or some other central position for general use and circulation.

The project of the executor of Dr. Rush to move the Philadelphia Library to Broad street, below Christian street, has proved so unpalatable to the members and to the Committee, that a plan for *dividing* the Library is suggested in the second resolution. But we call on you to notice that after you pass the first and second resolutions, it is quite open to the executor to say, and we believe he will say, that the *will requires*, by its letter and still more by its spirit, *that the whole Library shall be placed in the building prepared for it by the executor.*

Now, our point is this: That those who are for taking this trust, in the expectation of keeping a good part of the library from going down to the neighborhood of the Baltimore Railroad Depot, should take care to *vote for the fifth resolution*, which makes acceptance expressly conditional upon the right to keep up two libraries. Let the Company be assurred that unless this proviso is adopted the whole library will be taken to that "situation," which the executor, "under a broad and thoughtful foresight," has selected as most expedient" for the great public Library of Philadelphia.

Desiring to confine ourselves to a single point, we refrain from urging at this time the many objections which exist to an immediate acceptance of the Trust. We will merely say that at the meeting of twenty-ninth June the Directors presented the legal opinion of Mr. Meredith, Mr. McMurtrie and Mr. George W. Biddle, to the effect that the present is *not the proper time* to decide upon the acceptances of the Trust. In this opinion the Directors concurred, and they presented a resolution conforming thereto. This would have been immediately adopted but for the sanguine views of a few gentlemen, who seemed to think that it was a mere matter of accepting a loan of money, and that to hesitate was old fogyish and very Philadelphian. We hope that the Library Company will never be ashamed of these terrible adjectives, if they mean that we will never undertake to administer a Trust until we fully understand all its obligations, and () that having undertaken it, we do not intend to evade any of its provisions."

We earnestly beg members of the company to vote on the 19th inst. in person, or to give their proxies to gentlemen who will vote for a postponement of our decision. For observe that to vote *nay* on all the resolutions is *not a final rejection of the Trust.*

October 11, 1869. B.

J. S. Biddle

credit to them.

The Philadelphia Library Company.

To the Editors of the Sunday Dispatch:—A meeting of the stockholders of this company took place last week, and the daily papers have given publicity to the proceedings. We were pleased to find that some of the stockholders were awake to the importance of the measure, and that, notwithstanding the well-known influence of the Board of Directors and the manifest sympathy with them of the chairman of the meeting, (whom, strangely enough, they appoint,) the shareholders prevented the passage of the resolutions introduced by the joint committee, and they are to be referred to a direct vote of the stockholders on the 19th inst. *Why* there should be such hot haste to bind the company hand and foot to acceptance of the bequest seems inconceivable; for Dr. Rush's will expressly requires that the Executor shall erect the building and *then* offer it to the Library Company. They can lose nothing by delay and by carefully looking into the merits and advantages (or otherwise) of the proposed gift. If, as Judge King said at the meeting, the Executor has a right to a *pre*[illegible] determination which he can enforce in a court of Chancery, it would be better for all that such a course should be taken, for then the whole will would be interpreted, its confusions cle[illegible] up, the doubt about one or more library buildings solved, and all could act with a full understanding of the subject. We trust the Directors and their librarian will abstain from further interference—will not seek nor accept proxies—but that they will leave the matter for the unbiased decision of the stockholders. Our objections to acceptance of the bequest are many. The limit of the number of shareholders to less than one thousand; the proscription of certain classes of books and of newspapers, the only historians of the times; the restrictive and arbitrary location by the Executor; and the certainty that the gift will increase the annual dues of the stockholders—are among the many reasons that would induce us to reject the bequest, especially as the only penalty of rejection is a *free library* upon the testator's plan. At any rate, any acceptance now is but promissory and perhaps illusory, for t[illegible]ecutor *must* build first, and *then* (and not till [illegible]en) will the company be called upon to act definitely. To keep two libraries is such a violation of the will as the law will not tolerate, and such as no honorable man ought for a moment to suggest.

COMMON SENSE.

For the North American and United States Gazette.

To the Stockholders of the Philadelphia Library.

The acceptance or rejection of what is called the Rush bequest is to be settled, as far as the votes of the stockholders are concerned, on Tuesday next.

The small attendance at the meetings (about sixty, with over two hundred proxies) and the powerless condition of those who did attend, rendered so by the controlling number of proxies voted by the librarian, have combined to warn those interested lest some inconsiderate action may be taken which will result in the entire sacrifice of the best interests of the Library.

If a majority of the members, with full knowledge and proper deliberation, vote to accept the proposod gift, with its conditions, it is well. But we would deplore any action based upon a vote by proxies, given in an improvident and too confiding manner, the effect and consequences of such delegated authority not having been made clear.

The real friends of the Library wish to know, before they part with their rights and property, what will be the benefits they shall derive in return. A million of dollars is a noble gift, and much might be done with it; but, large though the sum be, it cannot compensate us if the whole amount is to be expended in useless buildings in a remote corner of the city, or if we are to empty our shelves of all that is valuable, and to remain pensioners on the frail bounties of an executor whose *sound discretion*, not Dr. Rush's choice, decides that the most eligible site for a public library in this city is at Broad and Christian streets.

The terms of the will provide that all the money save the amount representing the annuities, about $9000 per annum, must be spent on the building; therefore, until some annuitant dies, there will be no adequate funds—perhaps not enough to pay taxes, certainly not to buy books.

The building will be there, but the books must all come from our Library to garnish this mausoleum, sacred alike to the memory of the sources of this wealth and of the Philadelphia Library.

The most alluring picture, the most tempting bait, does not exceed the proposition that so much of the Library as shall be useful to the general reader shall remain within reach. The plain English of this is that an inferior accommodation, a convenient room in a central locality, shall be instituted, where novels and newspaper articles sought to be banished by Dr. Rush from his literary temple will answer all the needs of the nine hundred stockholders who have been accustomed to the old Library, while in the new quarters the portraits of the earlier benefactors will look sadly down on the ungrateful members who, dazzled by the glittering pile of the latest benefaction, fail to see anything beyond, and forget or spurn the humbler, though free and unfettered, donations of the past.

I have felt it my duty to call the attention of some stockholders to this matter, so that an intelligent vote may be taken, and if the members of the Company will look at the will, the resolutions, and the circular, and examine for themselves, then vote in person or by proxies framed for the occasion, whether the vote be for or against the acceptance, my object will be gained.

ANTI-PROXY.

[illegible] Second street.

For the North American and United States Gazette.

The Rush Bequest Once More.

I have just read a circular addressed to "The shareholders of the Philadelphia Library Company," signed by several of the joint committee appointed last June. With the strongest desire to see the present difficulties cleared up to the satisfaction of all, I cannot find in this new paper much to help us toward that end.

Without entering on all the topics there discussed, which others will doubtless do very fully, I must say that in one particular I find a strange inconsistency in opinion, which may lead to unfortunate, and I believe unintended, results.

On the first page of the circular we read: "Among the objections to the legacy is one that the Library Company of Philadelphia cannot consistently with the will of Dr. Rush retain any portion of these books in their present building. None of the objections taken seem to us more unsound than this." Yet on the next page [illegible] "The fifth resolution, if adopted, amounts to [illegible] rejection of the legacy, and was, as it seems to us, so intended. Members, therefore, favorable to accepting the legacy will of course write 'aye' opposite the last resolution."

Now, it appears to me that just the reverse of this last proposition must follow from the first, viz: that "members favorable to accepting the legacy" on the grounds assumed by the committee, unless they wish to stultify themselves, must *of course* write "aye" opposite to the last resolution. Let us see. The second resolution reported by the committee professes to authorize the directors to retain so much of the books which now do or hereafter shall belong to our Library Company in the present or some other suitable location. The fifth and last, proposed by Mr. Phillips, makes the acceptance of the bequest *conditional* on the *right* of the directors to do so. This change of phraseology seems slight, but, like a switch on a railway, it may make the whole difference in the destination of the train.

To a mind of ordinary capacity it seems clear that if, as the circular asserts, the directors would have that right notwithstanding an acceptance of the legacy, the expression of this in the form of a condition could do no harm. And if, as others assert, the true and honest construction of Dr. Rush's will must require the exile of our collection of books to his mausoleum, the condition then is a vital one and should, as I think a vast majority of the shareholders will agree, be insisted on. It is impossible to escape this dilemma after acceptance. Either we may lawfully keep our own Library, or we may not. Then in the one case the fifth resolution will be innocuous; in the other it will be our only safeguard.

I do not, of course, imagine for an instant that the very respectable gentlemen who have signed this circular have meant to mislead the shareholders, or to concur in any plan "to keep the word of promise to the ear and break it to the hope." I only think them wanting in that better logic which enables men to apply their common sense to unfamiliar circumstances. It is said, indeed, that they have been advised that a conditional acceptance would be *necessarily* void. I cannot believe this. I do not hesitate to say that no lawyer will be found to assert that the acceptance of a gift or trust will be vitiated by annexing to it, in express terms, a qualification or condition which would otherwise be implied by law, or which would follow from the very terms of the will.

On the other hand what will happen, if the shareholders vote "aye" on the first four resolutions, and "no" to the fifth, as they are asked to do?

Suppose on the completion of the building the executor should say to us, "You have once absolutely accepted the legacy. With your *subsequent* instructions to the directors I have nothing to do. Neither they nor I can now act contrary to the true meaning of the will, which *requires* the removal of the whole or the main part of your library to the new building, *and this you must do.*" Why should he not say this, if he then believed it? He has not bound himself to anything; he has scrupulously avoided so doing. Perhaps he thinks he cannot now bind himself. Perhaps he has as yet no definite conviction on the subject. The reason for his present silence is not material.

The question for us is, "How could we then resist his commands, especially when it will appear on record that a resolution which would have made them impossible was deliberately voted down by the shareholders?" But it may be said that, if Mr. Phillips' resolution is carried, the executor may, acting under a similar view to that announced

WILLIAM H. HILL, ARTIST

by the circular, treat it as a rejection of the legacy, refuse to recognize us further, and go on to erect the Ridgway Library building. What then? His decision if wrongful could not deprive the Library Company of its title under the will. Indeed, he would probably expend a smaller sum on the new building, which would be to our advantage, as leaving a larger surplus for books. Then when his building was complete the Library Company could demand a transfer of the building and surplus. If he refused, then it would be referred to the decision of a court whether the condition annexed to our acceptance was a lawful one implied in the gift itself. If it were, then we would necessarily succeed. If it were not we would, of course, lose the building and surplus; but we would have it established thereby conclusively that we could not lawfully or consistently with Dr. Rush's will retain our own collection of books at its present location. That being so, I presume most of the stockholders would be satisfied at their escape.

For the foregoing reasons I would say to those who, while they are not willing to reject the legacy altogether, would accept it only as a trust, leaving their own time-honored and most useful institution untrammeled in any serious way, vote "Aye" on the fifth resolution.

CAUTION.

To the Editor of the North American and U. S. Gazette.

Your issue of to-day contains an article signed "Anti-Proxy." As both sides should be heard, I ask, on behalf of those favorable to the acceptance of the bequest of Dr. Rush, that you will give the annexed a place in your paper as a reply to "Anti-Proxy." Truly, &c.,

F. FRALEY.

October 14, 1869.

To the Shareholders of the Library Company of Philadelphia:

The undersigned, members on behalf of the shareholders, of a joint committee of directors and shareholders, appointed on the subject of the bequest and legacy of the late Dr. James Rush, respectfully ask your attention to a few matters connected with the question of the acceptance or rejection of the munificent donation of the testator.

VALUE OF THE BEQUEST.

The value of the property bequeathed to the Library equals nearly one million one hundred thousand dollars, and from its nature we believe that it will considerably exceed that value before it will become necessary to transmute it into money. We think that all will agree that there is no institution more wanting in our large and beautiful city than a great public library, in which may be collected for public use those works of literature and science so necessary for intellectual development. In the magnificent donation of Dr. Rush an opportunity is afforded to accomplish an object so much to be desired.

The reasons which should lead to the rejection of such a legacy, and thus defeat this great public good, ought certainly to be clear, grave and imperative. The joint committee of directors and shareholders has given those assigned a long, most anxious and careful scrutiny, and have come to the conclusion that none of them separately, nor all combined, are adequate to such a result.

THE SITE OF THE PHILADELPHIA LIBRARY NOT TO BE CHANGED.

The principal objection to the acceptance of the legacy arises from the proposed site of the Ridgway Branch of the Library. It is true that the committee would have preferred a more central site for the building. But the executor of Dr. Rush, both from the expressed wishes of the testator during his life, as well as from his own judgment of the suitableness of the selected site, is indisposed to change it. The committee did not enter into the consideration whether the proposed site, situated as it is on the finest avenue of Philadelphia, might not at an early future be surrounded with the finest public and private structures, and thus become most eligible, because a simple solution of the difficulty presented itself. This was to keep up and maintain our present Library on its present site, retaining in it all books of general circulation; transferring to the Ridgway Branch only such works as are sought for by students and profounder scholars, and, if necessary, erecting a fireproof building on our present, or some equally convenient site, for the reception and distribution of works of general circulation.

THE RIDGWAY BRANCH SEPARATE AND SELF-SUPPORTING.

Among the other objections to the legacy is one that the Library Company of Philadelphia cannot, consistently with the will of Dr. Rush, retain any portion of their books in their present building. None of the objections taken seem to us more unsound than this. The Library Company of Philadelphia, its property and estate, are totally different things from the "Ridgway Branch of the Philadelphia Library." Dr. Rush distinctly provides for their always being kept separate and apart. The accounts of the "Ridgway Branch of the Library Company of Philadelphia" are, by the will, to be kept separate and distinct from "all other accounts of said Library Company." The books to be purchased for it are to be of solid literary character. In the clause providing for the change of trustees, in case of abuse of the trust, the books and furniture belonging to the Ridgway Branch of the Library are, together with the other estate, to be transferred to the new trustee. Without keeping the estate, property, books, &c., of the Ridgway Branch of the Library apart, the will could not be carried into effect. In the opinion of the committee, after the acceptance of Dr. Rush's legacy, the Library Company will continue in as full right of its property as it possessed before; and in no respect will it be mingled with or embarrassed by the property of the trust.

IMPORTANCE OF IMMEDIATE DECISION.

It is also urged that the time has not yet arrived for the acceptance or refusal of the legacy, but that such election is only required to be made when the Library building, intended by the executor to be placed under the care of the Library Company of Philadelphia, is erected and completed. This position was not regarded by the joint committee as well founded. It is true that, as part of the duties of his office, the executor is directed to erect a Library building, to be placed, when finished, in the care and control of the Company. But if the Library Company of Philadelphia should "omit or decline" the execution of the trusts of the will, then the executor is constituted a trustee to "*found* and *endow* a public library, entirely distinct from the Philadelphia Library, to be named and called the Ridgway Library." The building he would erect for the Ridgway Library would necessarily be a different one, in cost and extent, from one erected for the Ridgway Branch of the Philadelphia Library. Surely the executor, having such a double duty to perform, cannot, under such circumstances, be required to expend the bulk of the estate in a building for the occupation of the Philadelphia Library, without knowing whether, when such building is completed, the Philadelphia Library will accept it, and enter into the execution of the trust. The joint committee, therefore, were of opinion that the executor had the legal and moral right at once to know what position the Philadelphia Library intended to assume in regard to the acceptance or refusal of the trust, so as to enable him to carry out the alternative duty imposed on him by the will, in the event of a refusal.

One or two other objections started may be disposed of in a few words. It is said that under the language of the will books might be introduced of questionable morality. But as no books can be placed on our shelves except by the consent and with the approbation of the directors, the high social and moral character of these gentlemen is a guarantee against such an imaginative danger.

FREEDOM OF THE COMPANY FROM PECUNIARY RESPONSIBILITY.

There is nothing of practical value in the notion that the Library Company may incur pecuniary liabilities in accepting the simple execution of the trusts of the will. The estate is immense, and will come into our hands free from debts or liabilities. The only obligation the Library Company will assume in accepting this trust will be the obligation to execute its duties with fidelity. Your committee, therefore, advise that the first four resolutions submitted to the stockholders be voted on affirmatively.

THE FIFTH RESOLUTION A VIRTUAL REJECTION.

The fifth resolution, if adopted, amounts to a rejection of the legacy, and was, it seems to us, so intended. Members, therefore, favorable to accepting the legacy, will of course write "No" opposite the last resolution.

PROXIES NOT TO BE SENT TO OFFICERS OF THE COMPANY.

As the vote on the 19th inst. is intended to bring out the unbiassed opinions of the members, the directors of the company and their librarian decline to take proxies, and those who have already signed proxies to vote at the meetings of the company are requested, if not able to go to the polls themselves, to sign the new proxies sent to them, and if in favor of acceptance to forward the same by mail to either of the undersigned.

FRED'K FRALEY, No. 417 Walnut street.
EDWARD KING, No. 315 S. Fifteenth street.
BENJ. V. MARSH, No. 309 Market street.
WM. W. LONGSTRETH, No. 2017 Chestnut st.
JOS. CARSON, M. D., No. 1120 Spruce street.

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WILLIAM W. LONGSTRETH, No. 2017 Chestnut street.
JOSEPH CARSON, M. D., No. 1120 Spruce Street.

CIRCULAR.

The Stockholders of the Library Company of Philadelphia are required, on the 19th of October, to vote on certain resolutions proposed at a meeting of Stockholders, held on the 6th instant.

We beg to call your attention to what we deem the material questions. Every one recognizes the importance of an adequate building for the Library, and also of an endowment for the purchase of books, especially those of the character recommended by Dr. Rush.

If this Company shall fail to accept the provisions of the Will, the only consequence will be that a building will be erected, endowed and administered, by persons not constituting the Directors of our Company. Every one will have the same use of the building and books that he can have, if this Company accepts the trust. And unless we are prepared to remove our whole collection to Broad and Christian streets, we can perceive no one motive for an acceptance. For we must still maintain two establishments; one at which our members can resort, and the other as a receptacle for books not intended for ordinary use, to be kept at the new building, which is to be in a remote place suitable for students to retire to, but so entirely out of the range of common people, as to practically destroy such use of it as we have been accustomed to.

The resolutions numbers 1, 2, 3, do appear to imply that our acceptance is conditional on our retention of the liberty to maintain *a* Library at another and convenient place.

But when it was proposed to vary these so far as to make that an express condition of acceptance, it was not agreed to, and we therefore call your attention to the fifth resolution, and ask you to vote for that, if you deem the right to select a location distinct from Broad and Christian, for any purposes important, and you should think it desirable to accept the trust, before required to do so under the directions of the Will.

We call attention to the fact, which no one will dispute, that our right to maintain a separate building, after acceptance, cannot depend on the assent of the Executor, but on the meaning of the Will. He has no power either to impose or release the obligations there defined.

There are other considerations we deem most weighty, in determining whether to accept this trust now. The Will gives to the Executor the absolute right to select the location and to construct the building, and this discretion has been exercised by selecting Broad and Christian streets as the *most suitable* spot in the City for the purpose.

When he has completed the building, the whole details of which he is bound to retain under his discretion, and which discretion he cannot trammel for the future by any agreement, even if he desires to do so, the Will directs him to convey it to the Company as Trustees, when they are to assume certain obligations. If they violate them, the building will pass into other hands, and with it, all books, if there shall be any, which have been purchased with the funds coming from Dr. Rush.

There are some of these conditions which deserve consideration, but might be submitted to as the price of a liberal endowment fund, if that were certain to exist. Such as, 1st, A prohibition to increase the number of our shareholders, which may result in the elective franchise being monopolized by a few who think they see some advantage in controlling this Corporation and its funds. 2d, A restriction on the qualification of Directors, which may result in great inconvenience. 3d, The doubt whether the testator has not made it imperative that if we accept, we shall use his building as the sole depositary for our books. That he expected it is pretty certain. Whether he makes it obligatory is a serious question; and this cannot be waived or released. But there are both express and implied conditions, which we greatly fear may be ruinous, of which it is absolutely out of the power of any man now to decide the effect, seeing they depend on a state of facts as they will exist many years hence.

The Will certainly in terms directs the whole of the estate, except a fund adequate to pay annuities, to be expended in the purchase of the lot and erection of the building.

There are those who think this is not the meaning of the Will, and we hope they may be right. But we fear that as the words are express, so does it appear to have been the final intention of the testator. If this be so, there will remain a fund yielding about $10,000 per annum, which the Company will begin to receive when and as the annuitants die, to maintain the expenses of this splendid edifice, and purchase books. If it be not so, there will remain so much as is not expended in building. The futility of estimated expenses of such an undertaking need not be remarked on.

This Company are now asked to assume these obligations, certain in liability, with absolute uncertainty of means, and also a duty to publish at least five editions of 500 each, of all Dr. Rush's works, and keep them for sale at cost.

We respectfully ask, should we, the representatives of the charitable contributions of several generations that have built up the present library, hazard these unnecessarily, by assuming these obligations before the time that we are required to decide, and before we can possibly know wherewithal we shall perform them. And for what are we asked to do this? Not to save property from being lost to the cause of literature, but to prevent the existence of a distinct institution under a separate management.

This is the worst that can happen, for all that the Executor asks can be attained without this peril. It is the advice of our Directors, that he wishes, and that only; he does not agree to be governed by it. He could not do so, for he, as trustee, must act on his own discretion, and how far he will regard these wishes may be inferred from the attention paid to the universal and earnest entreaties on the subject of location.

These questions are grave, and should be considered carefully.

In asking you to vote negatively on the first resolution, we are doing what the Directors, in conformity with the opinion of counsel, advised at the meeting of June 29th, 1869. A copy of the resolution then offered by Mr. McCall, on behalf of the Directors, and of the opinion of counsel upon which it was based, are hereto annexed.

The effect of such a vote is not to bind the Company ultimately to reject the trust, but only to leave the question open till the proper time, viz: when the building having been erected and offered, we can ascertain if there are any funds left to maintain it, and what are the conditions and obligations we will assume by acceptance.

If you think there ought to be an immediate acceptance, then we ask you to consider whether you are prepared to agree that all the books of the Company shall be kept at Broad and Christian streets; if not, and you wish to reserve the right to have some of them kept at a place which is accessible, then we ask you to vote for the fifth resolution.

To sum up—

We would advise that you vote upon the first four resolutions, *No*, and upon the fifth, *Aye*.

The result of this will be, that if contrary to our expectations, a majority should vote to accept the legacy, then the fifth reso-

lution, if carried, will make the acceptance *conditional* on the right of the Library Company to control the location of its own collection of books. On the other hand, if a majority vote to reject the legacy, the passage of the fifth resolution will be merely harmless.

Proxies can be sent to either of the following persons, viz: James S. Biddle, 234 South Third street; William M. Tilghman, 417 Walnut street; Richard C. McMurtrie, 416 Walnut street; Henry M. Phillips, 126 South Sixth street; S. Kingston McCay, 429 Walnut street. The proxies should be *witnessed*, as well as signed, and the persons above named, on receiving them, are to be considered as expressly instructed to vote in the manner above expressed.

Philadelphia, *October* 12, 1869.

H. PRATT McKEAN,
EDW. S. WHELEN,
J. A. McCREA,
HENRY M. PHILLIPS,
JAS. S. BIDDLE,
JOHN SAMUEL,
S. KINGSTON McCAY,
THOS. McEUEN,
JAS. M. AERTSEN,
R. RUNDLE SMITH,
WM. M. TILGHMAN,
R. C. McMURTRIE,
J. D. RODNEY.

Opinion of Counsel.

We are of opinion that the time for the Library Company to accept the devise under the Will of Dr. James Rush, has not arrived. Until the Executor shall have completed a building, and tendered a conveyance, the Company could do no more than to agree to accept at a future time; and we think such an agreement should not be made, until the real position of the affair, and the plans of the Executor, are better ascertained, and the consequences considered.

We think, therefore, that it is expedient to postpone for the present at least, any action by the Company in reference to the Will, other than the observance of those provisions which they are required to observe to avoid disabling themselves from accepting in accordance with the terms of the Will.

W. M. MEREDITH,
R. C. McMURTRIE,
GEO. W. BIDDLE.

Resolution of June 29th, 1869, offered by Peter McCall, Esq., on behalf of the Directors.

Resolved, That the Directors of the Library be and they are hereby authorized to accept the bequests and devises in Dr. Rush's will, if and when they shall deem it advisable so to do, and be authorized to procure any legislation necessary for the purpose.

inches
centimeters
D50 Illuminant, 2 degree observer
Density
Golden Thread
Colors by Munsell Color Services Lab

Proxy sent out by Librarian

Know all Men by these Presents, That I,

do hereby appoint to be my substitute and proxy to vote on the 19th day of October, inst., on the Share in the LIBRARY COMPANY OF PHILADELPHIA, standing in the name of on any of the Resolutions to be voted on, on that day, in pursuance of a Resolution of the said Company, passed at an adjourned meeting on the 5th inst.; and also so to vote at any subsequent meeting of the members and stockholders of said Company in respect to the acceptance or refusal of the devises and bequests contained in the Will of the late DR. JAMES RUSH, on the conditions therein contained, and the application for appropriate legislation to carry the same into effect.

In witness whereof, I have hereunto set my hand and seal this day of October, 1869.

WITNESS PRESENT.

Proxy sent out to Members by Com^a (Colghman, McMurtrie & J. S. Biddle)

Know all Men by these Presents, That I,

do hereby appoint to be my substitute and proxy to vote on the 19th day of October, inst, on the Share in the LIBRARY COMPANY OF PHILADELPHIA, standing in the name of on any of the Resolutions to be voted on, on that day, in pursuance of a Resolution of the said Company, passed at an adjourned meeting on the 5th inst.; and also so to vote at all subsequent meetings of the members and stockholders of said Company in respect to the acceptance or refusal of the devises and bequests contained in the Will of the late DR. JAMES RUSH, on the conditions therein contained, and the application for appropriate legislation to carry the same into effect, and on all questions which may be submitted at such meetings.

In witness whereof, I have hereunto set my hand and seal this day of October, 1869.

WITNESS PRESENT,

For the North American and U. S. Gazette.

To the Stockholders of the Philadelphia Library.

Since my former communication I have received and read a circular addressed to the stockholders by Mr. Frederick Fraley, which has also been published in this paper in answer to my article and others, assigning reasons why the bequest should be immediately accepted, and the answers to the arguments contained in this paper are plain.

The Circular alleged: First, that the acceptance of the bequest will give to this city a great public library, and the reader is expected to believe that this is the only way to obtain this gift for our townsmen. The answer to this is that Dr. Rush provides, in case of the rejection by the company, then a great public library must be established.

Secondly, that the proposed site, though unsatisfactory to every stockholder, should be acquiesced in because "Dr. Rush expressed a wish in its favor, and that the executor, from his own judgment, is indisposed to change." To this we answer that Dr. Rush never saw the lot, and could have known little or nothing about it, else why should he in his original will have designated proper and large limits, wherein the buildings should be located, and then in his codicil, where his manifest intention was to increase those limits, should have restricted them down to a single lot, remarkable for nothing but for inconvenience. Under these circumstances the unanimous opposition of the stockholders to this site should have weight with the executor, and make him a little more flexible.

Thirdly, the circular avers that the Library Company may retain its present or some other central location, yet, utterly inconsistent, the writers urge that the acceptance of the bequest conditioned upon the retention of the present or similar location is a virtual rejection. That is, they assert that the stockholders, who are not bound by the will, shall not protect themselves by a proviso, because it would be an unlawful exercise of power; but that the executor, who is held strictly accountable, and who must adhere to the minutest provision and prohibition of the will, shall disregard and evade the declared and evident intention of Dr. Rush to establish a single solid library—not a reservoir at Broad and Christian and a tin cup at Fifth and Chestnut.

It is perfectly clear that the writers of the circular have no confidence in their opinion, else they would never argue that the acceptance, coupled with a condition consistent with the terms of the will, would defeat the bequests.

The fact is that the Library Company cannot accept this bequest and retain any useful or valuable part of the library elsewhere; and one fact stares us in the face, namely: that Mr. Williams, the executor, though a director of the company, has never said he would allow a separate library, and it may be fairly assumed that he will never say it.

But it must not be forgotten that eminent counsel, Messrs. R. C. McMurtrie, G. W. Biddle and William M. Meredith, have given the following opinion:

OPINION OF COUNSEL.

We are of opinion that the time for the Library Company to accept the devise under the will of Dr. James Rush has not arrived. Until the executor shall have completed a building and tendered a conveyance the Company could do no more than agree to accept at a future time; and we think such an agreement should not be made until the real position of the affair, and the plans of the executor, are both ascertained and the consequences considered.

We think, therefore, that it is expedient to postpone, for the present at least, any action by the Company in reference to the will, other than the observance of those provisions which they are required to observe to avoid disabling themselves from accepting in accordance with the terms of the will.

W. M. MEREDITH,
R. C. McMURTRIE,
GEO. W. BIDDLE.

The rejection, therefore, of the four first resolutions will only have the effect of postponing action until the proper time arrives. Nothing can be lost by delay, and something may be gained. To vote aye on the fifth resolution is simply to indorse the views of Mr. Fraley's circular, with this difference, that it places the responsibility of caution upon the stockholders, where it belongs, and not upon the executor, who has no right to assume it, and has shown no disposition to do so. ANTI-PROXY.

The Pecuniary Aspect of the Rush Devise.

To the Editor of the North American & U. S. Gazette.

I am a plain business man, and do not usually trouble myself about literary concerns, but I bought some years ago a share in the Philadelphia Library for my daughter, who has a taste for reading; and now she has been asking me how she ought to vote on the Rush bequest. This set me to studying out the matter practically, and my result differs from that stated by my respected friend, Frederick Fraley, whose circular I read in the paper to-day. I am free to say that at first a million of dollars seemed a big affair, and I judged that it would be a foolish thing to reject it from any fancies about the kind of books Dr. Rush liked or did not like, or his building site. I generally go for what I can get; and if a "gift horse," as they say, turns out to have glanders or to shy at engines, I sell him at once without warranty. But still I like to "look before I leap," as the old proverb runs. So I have figured up the account in this way:

The estate is worth, according to estimate just made,		$1,060,000
From this deduct United States and State taxes on succession at 11 per cent.,	$116,600	
Commissions and expenses of administration, at least,	50,000	
Cost of lot at Broad and Christian,	130,000	
Set apart for annuities,	200,000	
Cost of building, according to committee,	550,000	
Equipment of interior, not less than,	50,000	
		$1,096,600
This leaves a balance of deficit to start with of,		$64,400
To this must be added the amount necessary to set apart as a fund to pay for maintenance of the institution:		
Taxes on building and lot, say at 2 per cent. on $300,000, which would be the lowest assessment we could expect, or per year,	$6,000	
Salaries, not less than,	3,000	
Lighting, heating, &c.,	1,000	
	$10,000	
Or when capitalized,		$165,000
		$229,400
From this may, however be deducted the income saved during the erection of the building, which would take about two years; say on building and equipment $600,000, averaging the interest on probable payments made during progress of work at six per cent.,	$36,000	
Interest one year on executor's commissions and taxes,	9,000	
		$44,000
Estimate ultimate deficit,		$185,400

Or nearly the whole annuity fund.

This seems a little startling, so let us try it another way:

The income of the estate is now estimated at		$40,000
Add 6 per cent. on valuation of $140,000 of mansion house, now unproductive,		8,400
Add 6 per cent. on $44,000, income saved as above,		2,840
Total income.		$51,240
Deduct (if we can) from this the following necessary items:		
Interest at 6 per cent. on $110,000 taxes,	$6,600	
Interest at 6 per cent. on $50,000 commission,	3,000	
Interest at 6 per cent. on $130,000 cost of Broad street lot,	7,800	
Interest at 6 per cent. on $600,000 cost of building and equipment,	36,000	
Annuities,	9,000	
Maintenance of building, taxes, salaries, &c., as above,	10,000	
		72,400
Leaving a deficit of		21,160

From this deduct annuities when the last annuitant dies,	9,000
Total annual deficiency of	12,160
Equivalent to about,	200,000

In the above calculations I have taken the mansion house at the valuation given of $140,000, but having some knowledge of real estate myself, it is in my opinion not worth more than $100,000. The house is practically worthless, unless a chance purchaser came along. At public sale the property would bring only its value as building ground, which is scarcely $1000 a foot front there. I have also omitted above the cost of printing Dr. Rush's works for fifty years, as I am not familiar with the subject. I am told that it would not be less than $20,000.

With this light on the question I have advised my daughter to vote to reject the legacy, unless the lawyers can make it clear that none of the loss can fall on the Library Company.

October 15, 1869. MARKET STREET.

To the Editor of the North American and U. S. Gazette.

Philadelphia Library.

On the 19th inst., Tuesday next, the shareholders of the Philadelphia Library are to vote on the bequests of Dr. Rush, and to decide whether they will accept or reject them.

The legal points involved in the question have been so befogged by the conflicting opinions of the lawyers that men of common sense may safely consider this game to be a drawn one, and to settle down in the conviction that, if they accept on the terms proposed by the committee, they will be sure of getting the long-desired fire-proof building, and in the sequel a large endowment, for the purchase of books and the payment of current expenses.

When the opposition is sifted down, it all really rests on the building site selected by the executor, in compliance with the express directions of Dr. Rush; if that were out of the way, all the other difficulties that have been raised would vanish.

The real questions to be settled are: First. Whether the Company shall have speedily a fire-proof building, or continue to wait for it until a fund can be raised by accumulating the present building fund at compound interest; for all hope of further legacies for that purpose will be useless, in the face of the opposition that has been manifested to the Rush legacy.

Second. Notwithstanding the figures from "Market Street," whether we shall take a lot, and the building, furniture and fixtures put upon it, according to the additional codicil of the will of Dr. Rush of February, 1860, with such a margin as shall provide the payment of all annuities and an income sufficient to defray the ordinary and strictly appropriate expenses of the Library. [See copy of the will, pages 21 and 22.]

The elaborate estimate of "Market Street" overreaches itself by flying into the absurdity of supposing that the executor would venture to embarrass the trust fund while in his hands by a deficiency of $185,000.

A much safer estimate, and one which, if the Library Company found it necessary to do by law, they would easily succeed in doing, is as follows:

Estimated value of the estate now,	$1,067,000
Increase by an average annual clear income for three years while the building is being built,	60,000
Total,	$1,127,000

DEDUCTIONS.

Succession taxes,	$116,000
Expenses of administration,	50,000
	$166,000
Residuary estate,	$961,000

Now, from this residuary total the executor must, by the express terms of the will, reserve—

First, the capital of the annuities, which "Market Street" says will be	$200,000
Second, taxes and the ordinary and strictly appropriate expenses of the Library, repairs of the building, &c., $12,000 per annum, capitalized at six per cent.,	200,000
Third, cost of lot on Broad street,	130,000
Total,	$530,000
And this leaves the sum of	$431,000

which is all the executor can legitimately or safely expend on the building, furniture and fixtures, without a palpable violation of his trust.

As the $400,000 of capital reserved for the payment of the annuities, expenses, &c., will remain invested in improving real estate, it may safely be assumed that it will soon be largely increased; and there can be no question that ultimately the Library Company will have a fund of at least $600,000, the interest of which, even at five per cent. per annum, will give them an income of $30,000 a year for the payment of expenses and the purchase of books.

It must be borne in mind that the acceptance of the bequest of Dr. Rush does not deprive the Company of one dollar of its present proper estate and income. All these will be sold and used, in addition to the aid given to the Company from the Rush estate.

By erecting a fire-proof building on the site of our present edifice, a safe depository for books in ordinary use and circulation will be secured, and from the rents of offices in such a building a large income will be derived.

The four resolutions reported by the committee will secure to the Library Company at least as much as is indicated above.

The adoption of the fifth resolution, offered by Mr. Phillips, will undoubtedly amount to a rejection; it was offered avowedly for that purpose, and on that offer it should stand or fall.

It is not often that the acceptance of a million of dollars is quibbled over as this has been; but we hope the shareholders will not be frightened out of acceptance by an opposition that has no real foundation beyond Broad and Christian streets. If the site were still open, the opposition would not amount to a corporal's guard. F. F.

Editor North American and United States Gazette.

The Pecuniary Aspect of the Rush Devise.

In transcribing or printing the MS of my communication under the above head, in the North American to-day, some mistakes in the figures, which were, I fear, not very legibly written, occurred. The principal one was in the starting deficit, which should have been $34,000—not $64,000; and in the ultimate deficit, which should have been $155,000. The result, however, was not affected, namely: that nearly the whole annuity fund would be absorbed in advance, and in the meantime the resources of the Philadelphia Library would have to be resorted to.

October 16, 1869. MARKET STREET.

The Philadelphia Library.

To the Editor of the Evening Bulletin:—It is a lamentable fact that, as a general rule, stockholders take but little interest in the affairs of an institution until the time of danger, and then they find, sometimes too late for remedy, that the power given to the managers has not been wisely exercised. It is this indifference that makes doubtful the future of the Library Company; and it is for the purpose of endeavoring to excite the attention of the shareholders to examine the subject now in question, and which is so vital to the interests of the Company, that these views are presented.

The Library Company was established by Dr. Franklin and his associates in 1731. It procured the favor and patronage of the Proprietary Governors, who gave it a charter of incorporation in 1742. For the purpose of enlarging its sphere of usefulness, it was, in the year 1769, united with the Union Library Company, and thus obtained nearly three hundred new members, and at the present time it has about nine hundred and fifty shareholders; and to this number, at the outside, it must be forever limited if the bequest of Dr. Rush be accepted. Dr. Rush, by his will made in 1860, gives his residuary estate to his executor, Henry J. Williams, "in trust, to *select and purchase a lot of ground* not less than one hundred and fifty feet square, situate between Fourth and Fifth and Spruce and Race streets, in the city of Philadelphia, and thereon *to erect* a fire-proof building sufficiently large to accommodate and contain ALL the books of the Library Company of Philadelphia (whose library is *now* at the corner of Fifth and Library streets), &c." AND UPON THIS FURTHER TRUST, so soon as this building is completed and ready for occupation, *then* in trust to convey the same, with the lot whereon it is erected, unto the Library Company of Philadelphia aforesaid, and their successors, for the use of *their* library, and for no other use or purpose whatever—*provided*," &c.; and here he recites the conditions upon which the Executor is permitted to make a conveyance. By a codicil to his will, dated May, 1867, he authorizes his Executor "to select any situation he may deem most expedient." In the same codicil, after declaring that his Executor shall erect a building "for the Library Company of Philadelphia, not only large enough to contain their *present* books, but also their probable increase for many years to come," he directs his Executor "to expend *the whole remainder* of my estate in the purchase of a lot and the erection of the library building, construction of book-cases, &c., leaving the said company only an income sufficient to defray the ordinary and strictly appropriate expenses of such an institution." It will thus be seen that all his estate, excepting legacies of annuities amounting in all to about $8,400 per annum, *must* be expended on the building, and that the interest on the annuities, as each one falls in, is all that is given for support of the library; that the expenditures are to be such as he requires, under heavy penalties, and for the purpose of exacting these penalties, the accounts of the Ridgway branch must be kept separate and distinct; that the main library must be supported from other sources, and as the annual dues of members at the present rate of $5 will only produce $4,750, this subscription must be increased, for the new and larger building will make heavier expenses. There [illegible] other restrictions not *now* necessary to [illegible]ered, cause the time has not come [illegible], and he tempt to precipitate action [illegible] is time is most unaccountable. The Executor, though invested with the right to select *any* location, insists upon a lot at Broad and Carpenter streets, which [illegible] bought shortly before Dr. Rush's death, as was explained at the meeting of shareholders, and *which Dr. Rush never saw*. Nine-tenths of the shareholders are opposed to this location, and yet it is attempted to *buy* them by the large bequest. The Executor's duty is plain, not to make an effort to coerce acceptance at this time—but to proceed and erect the building; and *then*, and not till then, if the Legislature will make the necessary alterations in the charter, and the company will accept these changes, to convey it to the company. The Executor may rest assured that whatever may be the action *now*, there will be found *then* some prepared to reject the bequest and to endeavor to prevent such legislative action, as is prescribed; and the right to accept or reject belongs to those who may be shareholders *then*, and not those who are so *now*.

Present action will not bind nor prevent future, and of a different kind; and certainly it is better to await the chapter of accidents, take all chances and see the building erected according to the Executor's will and pleasure, before it is determined to receive it, especially as nothing is gained by present acceptance. The fund of nearly $100,000, so long accumulating, the Building Fund, to which the late Mr. Fisher made a large contribution, must be surrendered and returned to the original donors; for law, as well as honor, will prevent it from being used for any other purpose than erecting a library building.

The resolutions to be voted upon by the stockholders on the 19th are:

Firstly—To accept the bequest.

Secondly—To retain the present collection of books in the present building.

Thirdly—To appoint a committee to consult with Dr. Rush's executor, and carry the resolutions into effect.

Fourthly—To return thanks; and

Fifthly—To unite the two first resolutions, so that they must stand or fall together.

The writer is of opinion that the provisions of the will are obligatory; that a branch of the Library cannot be maintained in its present location, and *the Executor has never said otherwise*, and while the acceptance would (or might) be binding, the second proposition would be nugatory and invalid. If those who presented these resolutions are sincere in their belief and purpose—if they think that a branch may be retained in its present location—there can be no objection to the fifth proposition. So that, whatever may be the vote on the first three, it is certainly safe to vote "aye" on the last. A negative vote on the others will only postpone action till the building is erected, when eyes and ears can help the judgment; though in case the negative should not prevail, an affirmative vote on the fifth resolution will be calculated to promote the interests of the Company and the harmony of its members.

A SHAREHOLDER.

THE LIBRARY QUESTION.

The Social Aspects of the Rush Bequest.

To the Editor of the Evening Telegraph.

I suppose those of your yeaders who have no special interest in the Philadelphia Library are getting pretty tired of the discussions in your columns and those of the other newspapers in this city on the Rush question, and are glad that there are only two or three days left for the purpose. There is, however, one aspect of the subject in which the whole community is interested, on which I beg leave to touch briefly.

The Philadelphia Library was founded by Franklin as a lending or circulating library—an unknown thing at that time, though now, of course, quite common. He saw that while public libraries, as then conducted, were useful to professional or amateur students who could spend whole days within their learned precincts, to the mass, and especially to the young, the busy, and the infirm, they were practically closed. The idea was, and for more than a century it has been faithfully carried out, to have a collection of useful and attractive books which could be taken to the counting-house, the workshop, or the home, and read in the intervals of labor or the periods of rest. That a vast benefit has been thus conferred on our city there can be no doubt. If it has created for us no eminent scholars, it has diffused among the people at large an amount of general knowledge, and an acquaintance with current literature and science, unequalled, I believe, in any other community. And how much incidental good it has quietly done! How many young men and women has the home use of the library kept from the haunts of dissipation and vice! For how many of the sick and aged has the enforced seclusion o the chamber been relieved and brightened by its cheerful literature; how many in their solitude and grief have found companionship and consolation during "slow, sad hours" of the night in its graver books. For its silent help in all these several ways to myself, and others dear to me, I, for one, can never be too grateful; and the day which will see the final closing of its venerable doors, if it occur in my lifetime, will be one of the saddest in it.

To choose wisely for such varied purposes, and to satisfy such different tastes as I have above alluded to, is a matter which requires the exercise of a conscientious and careful judgment on the part of the librarian and directors. They feel, I believe, that as their shelves are open to all, they ought not to permit in their collection works that parents would not desire in the hands of their sons or daughters. Not that there has been any wish to exclude books from mere sectarian or prudish motives, but the directors have acted on an honest desire to deserve the confidence reposed in them by the shareholders, even whose prejudices they are bound to respect.

Now I find, on reading Dr. Rush's will, that the library he wishes to endow departs very much from the characteristics of our own. Among the conditions on which we are to take the devise, and the non-observance of which by us would create a forfeiture, I find some of importance in this respect. He directs the rejection of "ephemeral biographies, novels, and works of fiction or amusement, newspapers or periodicals, which form so large a part of the current literature of the day" (p. 13 of will); and in another place (p. 27), "every-day novels, mind-tainting reviews, controversial politics, scribblings of poetry and prose, biographies of unknown names, nor for those teachers of disjointed thinking, the daily newspapers." I fear this would drive away, if acted on, most of our young readers, and many of the older ones, too. On the other hand, he says (p. 13):—"I do not wish that any work should be excluded from the library on account of its difference from the ordinary or conventional opinions on the subjects of science, government, theology, morals, or medicine, provided it contains neither ribaldry nor indecency."

Yet I fear that parents may think that a good deal of harm may be instilled into their children's mind without the actual use of "ribaldry or indecency." Prussic acid is, I believe, much more agreeable to the taste and smell than assafœdita, yet it is not the less dangerous to leave about. As I observe on the list of shareholders the name of the Sunday-School Union, and of several churches, I hardly hardly think this will be agreeable to them either.

If it is clear that the library to be bought with Dr. Rush's money can be lawfully kept separate from our own, in a separate building, of course I should see no objection to our library company acting as its mere custodian. Its location will be such as to put it out of the reach of harm to our young readers, and to mere students a little more or less free thinking and liberality of ethics will not be of importance. But if the two collections are to be run into one, and boys and girls are to be allowed to range at will over the latitudinarian aggregate, I do most certainly object, both as a shareholder and as A CITIZEN.

CIRCULAR.

The stockholders of the Library Company of Philadelphia are required, on the 19th of October, to vote on certain resolutions proposed at a meeting of stockholders held on the 6th instant.

We beg to call your attention to what we deem the material questions. Every one recognizes the importance of an adequate building for the library, and also of an endowment for the purchase of books, especially those of the character recommended by Dr. Rush.

If this company shall fail to accept the provisions of the will, the only consequence will be that a building will be erected, endowed, and administered by persons not constituting the directors of our company. Every one will have the same use of the building and books that he can have if this company accepts the trust. And unless we are prepared to remove our whole collection to Broad and Christian streets, we can perceive no one motive for an acceptance.

For we must still maintain two establishments; one at which our members can resort, and the other as a receptacle for books not intended for ordinary use, to be kept at the new building, which is to be in a remote place suitable for students to retire to, but so entirely out of the range of common people, as to practically destroy such use of it as we have been accustomed to.

The resolutions numbers 1, 2, 3, do appear to imply that our acceptance is conditional on our retention of the liberty to maintain a library at another and convenient place.

But when it was proposed to vary these so far as to make that an express condition of acceptance, it was not agreed to, and we therefore call your attention to the fifth resolution, and ask you to vote for that, if you deem the right to select a location distinct from Broad and Christian for any purposes important, and you should think it desirable to accept the trust, before required to do so under the directions of the will.

We call attention to the fact, which no one will dispute, that our right to maintain a separate building, after acceptance, cannot depend on the assent of the executor, but on the meaning of the will. He has no power either to impose or release the obligations there defined.

There are other considerations we deem most weighty in determining whether to accept this trust now. The will gives to the executor the absolute right to select the location and to construct the building, and this discretion has been exercised by selecting Broad and Christian streets as the *most suitable* spot in the city for the purpose.

When he has completed the building, the whole details of which he is bound to retain under his discretion, and which discretion he is not trammeled for the future by any agreement, even if he desires to do so, the will directs him to convey it to the company as trustees, when they are to assume certain obligations. If they violate them, the building will pass into other hands, and with it, all books, if there shall be any, which have been purchased with the funds coming from Dr. Rush.

There are some of these conditions which deserve consideration, but might be submitted to as the price of a liberal endowment fund, if that were certain to exist. Such as, 1st, A prohibition to increase the number of our shareholders, which may result in the elective franchise being monopolized by a few who think they see some advantage in controlling this corporation and its funds. 2d, A restriction on the qualification of directors, which may result in great inconvenience. 3d, The doubt whether the testator has not made it imperative that if we accept we shall use his building as the sole depositary for our books. That he expected it is pretty certain. Whether he makes it obligatory is a serious question; and this cannot be waived or released. But there are both express and implied conditions which we greatly fear may be ruinous, of

which it is absolutely out of the power of any man now to decide the effect, seeing they depend on a state of facts as they will exist many years hence.

The will certainly in terms directs the whole of the estate, except a fund adequate to pay annuities, to be expended in the purchase of the lot and erection of the building.

There are those who think this is not the meaning of the will, and we hope they may be right. But we fear that as the words are express, so does it appear to have been the final intention of the testator. If this be so, there will remain a fund yielding about $10,000 per annum, which the company will begin to receive when, and as the annuitants die, to maintain the expenses of this splendid edifice and purchase books. If it be not so, there will remain so much as is not expended in building. The futility of estimated expenses of such an undertaking need not be remarked on.

This company are now asked to assume these obligations, certain in liability, with absolute uncertainty of means, and a duty to publish at least five editions of five hundred each, of all Dr. Rush's works, and keep them for sale at cost.

We respectfully ask, should we, the representatives of the charitable contributions of several generations that have built up the present library, hazard these unnecessarily, by assuming these obligations before the time that we are required to decide, and before we can possibly know wherewithal we shall perform them. And for what are we asked to do this? Not to save property from being lost to the cause of literature, but to prevent the existence of a distinct institution under a separate management.

This is the worst that can happen, for all that the executor asks can be attained without this peril. It is the advice of our Directors that he wishes, and that only; he does not agree to be governed by it. He could not do so, for he, as trustee, must act on his own discretion, and how far he will regard these wishes may be inferred from the attention paid to the universal and earnest entreaties on the subject of location.

These questions are grave, and should be considered carefully.

In asking you to vote negatively on the first resolution, we are doing what the Directors, in conformity with the opinion of counsel, advised at the meeting of June 29, 1869. A copy of the resolution then offered by Mr. McCall, on behalf of the Directors, and of the opinion of counsel upon which it was based, are hereto annexed.

The effect of such a vote is not to bind the company ultimately to reject the trust, but only to leave the question open till the proper time, viz.: when the building having been erected and offered, we can ascertain if there are any funds left to maintain it, and what are the conditions and obligations we will assume by acceptance.

If you think there ought to be an immediate acceptance, then we ask you to consider whether you are prepared to agree that all the books of the company shall be kept at Broad and Christian streets; if not, and you wish to reserve the right to have some of them kept at a place which is accessible, then we ask you to vote for the fifth resolution.

To sum up—

We would advise that you vote upon the first four resolutions, *No*, and upon the fifth, *Aye*.

The result of this will be, that if, contrary to our expectations, a majority should vote to accept the legacy, then the fifth resolution, if carried, will make the acceptance *conditional* on the right of the Library Company to control the location of its own collection of books. On the other hand, if a majority vote to reject the legaay, the passage of the fifth resolution will be merely harmless.

Proxies can be sent to either of the following persons, viz:—James S. Biddle, No. 234 South Third street; William M. Tilghman, No. 417 Walnut street; Richard C. McMurtrie, No. 416 Walnut street; Henry M. Phillips, No. 128 South Sixth street; S. Kingston McCay, No. 429 Walnut street. The proxies should be witnessed, as well as signed, and the persons above named, on receiving them, are to be considered as expressly instructed to vote in the manner above expressed.

Philadelphia, October 12, 1869.

H. Pratt McKean,
Edw. F. Whelen,
J. A. McCrea,
Henry M. Phillips,
Jas. S. Biddle,
John Samuel,
Thomas McEwen,
Jas. M. Aertsen,
R. Rundle Smith,
Wm. M. Tilghman,
R. C. McMurtrie,
J. D. Rodney,
S. Kingston McCay.

OPINION OF COUNSEL.

We are of opinion that the time for the Library Company to accept the devise under the will of Dr. James Rush has not arrived. Until the executor shall have completed a building, and tendered a conveyance, the company could do no more than to agree to accept at a future time: and we think such an agreement should not be made until the real position of the affair, and the plans of the executor, are better ascertained, and the consequences considered.

We think, therefore, that it is expedient to postpone, for the present at least, any action by the company in reference to the will, other than the observance of those provisions which they are required to observe to avoid disabling themselves from accepting in accordance with the terms of the will.

W. M. Meredith,
D. C. McMurtrie,
Geo. W. Biddle.

Resolution of June 29, 1869, offered by Peter McCall, Esq., on behalf of the directors:—

Resolved, That the directors of the library be and they are hereby authorized to accept the bequests and devises in Dr. Rush's will, if and when they shall deem it advisable so to do, and be authorized to procure any legislation necessary for the purpose.

From a Correspondent.

To the Editor of the Evening Telegraph.

In the recently-issued circular signed by five gentlemen who are in favor of accepting the elephant bequeathed to the library by Dr. James Rush, the objection that "books might be introduced of questionable morality" is pronounced "an imaginative danger," probably meaning an imaginary danger, for, as dangers are not possessed of imaginations, they cannot be imaginative. And why is it an imaginary danger? Because "no books can be placed on our shelves, except by the consent and with the approbation of the directors, the high social and moral character of these gentlemen is a guarantee against such an imaginative danger."

The high respectability of the present directors is freely conceded, and it is to be hoped that their successors to the end of time will be equally worthy; but the question is not one of respectability but of power. In the first codicil to the will, Dr. James Rush lays down a number of "conditions, restrictions, and directions, under and subject to which the bequest is to be accepted, if accepted at all, and this is one of them:—

"*Fifth*. I do not wish that any work should be excluded from the library on account of its difference from the ordinary or conventional opinions on the subjects of science, government, theology, morals, or medicine, providing it contains neither ribaldry nor indecency."

Whether this be a *condition* or a *direction*, it deprives the directors of all power to exclude irreligious and immoral books from the shelves of the library. As far as the decision of such an admission is concerned, except as to the presence of ribaldry or indecency in the books presented, they would be powerless. Ten or twelve wax-figures borrowed from Barnum would have as much control over such a question.

The directors in the past have also been of high social position, and yet that has not prevented the intrusion of improper books. Some of the vilest novels in the French language were in the library a few years ago. I do not name them, but it is no secret that many of Madame Dudevant's works are highly immoral. One of the worst was among the new books four or five years ago. The directors have their own business to attend to, and they serve without pay. It cannot be expected that they should know in advance the character of the many hundreds of books added yearly to the library. W. D.

Philadelphia, Oct. 16, 1869.

W. Duane

The Philadelphia Library.

To the Editor of The Evening Telegraph.

The bequest of the late Dr. Rush is understood to require the Library Company, if they accept the Trust, to publish every ten years for fifty years an edition of 500 copies of the works of the testator. It therefore concerns the members of the company to know what those works are, to wit:—

Hamlet, a Dramatic Prelude, in five acts.

Enquiry into the Uses of the Omentum.

The Philosophy of the Human Voice.

A Brief Outline of an Analysis of the Human Intellect. Intended to rectify the scholastic and vulgar perversions of the natural purpose and method of thinking, by rejecting altogether the theoretic confusion, the unmeaning arrangement, and indefinite nomenclature of the metaphysician. 2 vols. 8vo. Price $7·50.

Rhymes of Contrast on Wisdom and Folly. Intended to Exemplify an important Agent in the Working Plan of the Human Intellect. A Narrated Dialogue. Crown 8vo. Price $1·25.

There may be others not known to the present writer; but I am informed there are seven in all. The above, it will be seen, will make six volumes, five hundred copies of which are to be published every ten years. Three thousand volumes published five times will amount to fifteen thousand volumes. In these days of "disjointed thinking," when men strangely ignore books which are "clear, pure, and deep, diffusing healthy, truthful, and valuable information" (see Dr. Rush's will), we may set down the demand for these works at, say, five hundred.

This will leave 14,500 volumes to be accommodated by the company forever. It has been suggested that the very capacious basement of the new buildings ordered by the testator may have been intended for this purpose. But we can discover no such intent in the will itself, and in fact it is obvious that such a receptacle would not be sufficiently *dry* for books of this character.

A MEMBER.

Oct. 18, 1869.

...increasing.

The Philadelphia Library.

To the Editors of the Sunday Dispatch:—

I have been a stockholder of the Philadelphia Library for upward of thirty years, and feel an interest in the permanent welfare of the institution. In order to understand the subject now agitated, I have examined Dr. Rush's will, and I find that the clause restricting the number of stockholders is, perhaps, even worse than you have described it to be. The condition dictated by the will is that "the number of shares in the Library shall be limited to *those* actually issued at the time of my death." Now, Dr. Rush was an educated man, a scholar, and a philologist; he generally wrote better grammar than logic; and it looks as if he intended that the *shares* should be limited and not their *number*, otherwise he would have used the word *that* instead of *those*. *No other shares than those actually issued at the time of his death*, it seems to me, was what he intended to say, so that the *whole* Library might become free; and who can tell what construction a Court may give to such language?

QUESTOR.

Our New York Gossip.

H. M. Phillips

☞ LIBRARY COMPANY.—AN ADjourned meeting of the Library Company of Philadelphia will be held on THURSDAY, the 21st instant, at 12 o'clock, at the Library, to receive the report of the tellers on the subject of the Rush Legacy. [oc19 2trps

1109 GIRARD STREET. 1109

Rush (James, M.D.). A Brief Outline of an Analysis of the Human Intellect: Intended to rectify the scholastic and vulgar perversions of the natural purpose and method of thinking, by rejecting altogether the theoretic confusion, the unmeaning arrangement, and indefinite nomenclature of the metaphysician. 2 vols. 8vo. Cloth. $7.50.** 7.50

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——**Rhymes of Contrast on Wisdom** and Folly. Intended to exemplify an Important Agent in the Working Plan of the Human Intellect. A Narrated Dialogue. Crown 8vo. Cloth. $1.25.** 1.00

Rush (Richard). Occasional Productions; Political, Diplomatic, and Miscellaneous: including, among others, a Glance at the Court and Government of Louis Philippe, and the French Revolution of 1848. 8vo. Cloth. $2.25. 1.80

(Original Memorandum of Count of Votes) J. I. Riddle

1st Resolution

Ayes	Noes			
298	293	Majy	5	591

2d Resolution

Ayes	Noes			
256	301	"	45	557

3d Resolution

Ayes	Noes			
213	362	"	149	575

4th Resolution

Ayes	Noes			
268	293	"	25	561

5th Resolution

Ayes	Noes			
259	316	"	57	475

THE RUSH BEQUEST.

Its Unconditional Acceptance by the Philadelphia Library—Vote 298 Yeas to 293 Nays.

Yesterday the members of the Philadelphia Library Company voted upon the resolutions submitted at a meeting held some time since. Six hundred and sixty-nine shares of stock have been issued by the Library Company since it was founded, and for the first time in its history, the votes of nearly every surviving stockholder were brought out to decide whether the legacy bequeathed by will to the company by the late Dr. James Rush should be accepted.

The highest vote cast was upon the first resolution, being 591.

The resolutions voted upon were as follows:—

Resolved, That the stockholders of the Library Company of Philadelphia do hereby accept the legacy of Dr. James Rush according to the terms expressed in his will.

Yeas.....298
Nays.....293

Majority for acceptance..... 5

Resolved, That so much of the present collection of books and other property of the company as may by the directors be deemed expedient shall be retained in the present or some other central position for general use and circulation.

Nays.....301
Yeas.....256

Majority against..... 45

Resolved, That a committee, to consist of three stockholders and three directors, shall be appointed for the purpose of consulting and advising with the executor of Dr. Rush in carrying out the provisions of the will, in procuring such legislation as may be needed, and also for carrying into effect the second resolution, by taking measures for securing the erection of a fire-proof building for the reception of those parts of the library so to be retained, at such time and in such place as said committee may determine.

Nays.....362
Yeas.....213

Majority against.....149

Resolved, That a copy of the foregoing resolutions be transmitted to Henry J. Williams, Esq., the executor of Dr. James Rush, as the acceptance of this company of the bequest made by his will, and that the letter transmitting the same shall acknowledge the high appreciation by the company of the confidence reposed in them by Dr. Rush, and of their cordial willingness to unite in carrying out in the most beneficial way his philanthropic intentions.

Nays.....293
Yeas.....268

Majority against..... 25

The above resolutions are those reported by the Joint Committee of Stockholders and Directors.

The following additional resolution was offered by Hon. Henry M. Phillips:—

Resolved, That the acceptance of the stockholders of the Library Company of Philadelphia is upon the express provision that so much of the present collection of books and other property of the company as may by the directors be deemed expedient, shall be retained in the present or some central position for general use and circulation.

Nays.....316
Ayes.....259

Majority against..... 57

It will be seen that by a very close vote the legacy is accepted unconditionally. The contest was spirited during the day. Both [illegible] it was not until [illegible]

THE RUSH BEQUEST AND PHILADELPHIA LIBRARY COMPANY.—Yesterday afternoon, the stockholders of the Philadelphia Library Company held a meeting to receive the report of the tellers of the vote on the resolutions relative to the acceptance of the bequest of the late Dr. James Rush.

Hon. Eli K. Price was called to the Chair.

Tellers were appointed and announced that a quorum of the members were represented in person or by proxy.

Hon. Edward King, on behalf of the tellers appointed to receive and count the votes of the stockholders on the resolutions reported by the joint committees of the directors and stockholders, &c., made a report. There were 597 votes cast. On the first resolution there were 298 for and 293 against. Second resolution, 256 for and 301 against. Third resolution, 213 for and 362 against. Fourth resolution, 268 for and 298 against. Fifth resolution, 259 for and 316 against. The tellers, therefore, announced that the first resolution, accepting the legacy of Dr. James Rush, according to its terms, had been agreed to, and the other resolutions had been disagreed to.

Mr. Frederick Fraley said that the result of the vote had no doubt surprised many persons, and it has been commented upon in various ways. It is desirable to avoid discussions which will lead to personal feelings, and efforts should be made to bring all of the elements to a fair examination of all the facts, which will lead to a satisfactory solution of the question. With that view he had been requested to submit a resolution which had met the concurrence of both sides. He then offered the following:

Resolved, That the further consideration of the bequest of Dr. James Rush be postponed, and that a committee to be composed of five members and the directors be appointed to take the matter into consideration, and to recommend to the members, at a meeting to be called by the directors, such action as may be deemed expedient or necessary.

Honorable H. M. Phillips endorsed the resolution.

Colonel J. Ross Snowden thought that the question had already been settled in the best way by a stock vote of the members. He therefore offered the following:

Whereas, A majority of the stockholders of the Library Company of Philadelphia has accepted, by a stock vote, on the 19th instant, the legacy of the late Dr. James Rush, according to the terms in his will; therefore,

Resolved, That the resolution adopted by the said vote be entered on the minutes of the Library Company, as the acceptance by said company of the munificent and philanthropic bequest of Dr. Rush.

Resolved, That a committee, to consist of three stockholders and three directors, be appointed to co-operate with the executor of Dr. Rush in carrying into effect the provisions of the said will.

Resolved, That the early construction of a fire-proof building to contain the valuable books, papers and other treasures of the Library Company, as well as those which will hereafter be obtained, is an object of the highest importance, and demands the immediate attention of the Company and of the Executor of the will of Dr. Rush.

Resolved, That a copy of the resolution adopted by a vote of the stockholders, together with these proceedings, be sent to H. J. Williams, Esq., the Executor of Dr. Rush.

Theodore Cuyler, Esq., considered the matter settled by the stock vote. He knew of no other city where the discussion of the acceptance of such a munificent bequest would have been carried on to such an extent as this has been. Other cities would have accepted the legacy at once and erected a monument to the benefactor.

A lengthy discussion then ensued, and it was pretty generally argued that the bequest had been accepted by the stock vote, and therefore the result cannot be changed by any action proposed.

Mr. James S. Biddle claimed that the resolutions of Colonel Snowden were virtually the resolutions which had been voted down by a much larger vote than the resolution of acceptance had been adopted. If one is reversed the other has a good right to be.

General W. A. Stokes raised a point of order—that this meeting was called to hear the report of the tellers, and therefore these resolutions were out of order.

The Chairman decided that this was a meeting [illegible] that all questions which had

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THE LEGACY OF DR. RUSH—ACTION OF THE PHILADELPHIA LIBRARY COMPANY.—An adjourned meeting of stockholders of the Philadelphia Library Company was held at noon yesterday, to receive the report of the committee appointed to take the stock vote on the subject of the Rush Legacy. In the absence of Judge Sharswood, Eli K. Price, Esq., was called to the chair. When it had been ascertained that a quorum of the members was present, Hon. Edward King, chairman of the committee, made a report of the stock vote, as previously published. The result was stated to be that the resolution accepting the legacy of Dr. Rush according to the terms of the will, had been adopted, and that all the others had been rejected.

Mr. Fraley said that the result of the stock vote had taken every one by surprise who had participated actively in the canvass, and upon consultation of many who had been active, it had been concluded as the wisest and best course to pursue, to avoid at the present time exciting discussion on the question of the legacy, and he had prepared a resolution, which had met general approval, and which he would submit. It was in these words:

Resolved, That the further consideration of the bequest of Dr. James Rush be postponed, and that a committee consisting of five members and the Directors be appointed, who shall take the subject into consideration, and shall recommend to the members at a meeting to be called by the Directors such action as they may deem expedient or necessary.

Colonel J. Ross Snowden said that he was sorry he could not agree with Mr. Fraley in the views he had expressed, and he should oppose the resolution. He thought the question had been settled, and settled in a proper way. A stock vote had been taken, and that vote had shown a majority of the members who had thought proper to come forward to be in favor of the unconditional acceptance of the legacy. Was that vote to be totally disregarded? The speaker hoped not. With a view of obtaining an expression of opinion on the subject, he offered the following resolutions as a substitute to that offered by Mr. Fraley:

Whereas, A majority of the stockholders of the Library Company of Philadelphia has accepted, by a stock vote, on the 19th instant, the legacy of the late Dr. James Rush, according to the terms in his will; therefore

Resolved, That the resolution adopted by the said vote be entered on the minutes of the Library Company, as the acceptance by said Company of the munificent and philanthropic bequest of Dr. Rush.

Resolved, That a committee to consist of three Stockholders and three Directors be appointed to coöperate with the executor of Dr. Rush in carrying into effect the provisions of the said will.

Resolved, That the early construction of a fire-proof building to contain the valuable books, papers and other treasures of the Library Company, as well as those which will hereafter be obtained, is an object of the highest importance, and demands the immediate attention of the Company and of the executor of the ill of Dr. Rush.

Resolved, That a copy of the resolution adopted by a vote of the stockholders, together with these proceedings, be sent to H. J. Williams, Esq., the executor of Dr. Rush.

Colonel Snowden supported the resolutions by further remarks, in which he spoke strongly of the necessity of having a fireproof building for the Philadelphia Library. The history of our country, he said, illustrates the necessity for such a structure. For the want of one the early archives of New Hampshire, Massachusetts, New York, New Jersey, North Carolina and Virginia have been entirely or partially destroyed by fire. Valuable papers and documents of the United States Government have on several occasions been lost from the same cause. The resolutions he offered were intended to carry out the unconditional acceptance of the trust, which did not preclude such arrangements as might be deemed necessary to enable stockholders to obtain books as heretofore.

Theodore Cuyler, Esq., said he thought Philadelphia the only city in the world in which a discussion such as had been heard would have taken place, on the subject of accepting so magnificent a bequest as that of Dr. Rush. In other cities the bequest would not only have been promptly accepted, but a monument would have been erected to the memory of the beneficiary as a public benefactor. [Applause.] He had been unable to perceive force in any of the reasons which had been given for a postponement of the question.

In all fairness, the Library Company was bound to accept, if it designed to do it at all, within a reasonable time. It surely is not a reasonable time, he thought, after the executor of Dr. Rush had put up a building, as some gentlemen seemed to suppose. Such a building as he would erect might not be suitable for the Philadelphia Library, or it might be different from one the Library Company would desire to have erected. He urged the unconditional acceptance of the legacy promptly.

After remarks by General Stokes, Mr. Wm. Biddle, and others, the vote was taken on Col. Snowden's substitute, and it was declared lost. A division was called for, but the call came too late, it was said. Mr. Fraley's resolution was then adopted, and the meeting adjourned.

THE PHILADELPHIA LIBRARY AND THE RUSH BEQUEST.—At twelve o'clock, yesterday, there was a large meeting of stockholders of the Philadelphia Library Company, at the Library building, Fifth and Library streets, to receive the report of the tellers, appointed to count the votes taken, relative to the adoption or rejection of the resolutions in relation to the acceptance of Dr. Rush's legacy, and for other purposes. Eli K. Price, Esq., was selected as chairman.

The minutes of the preceding meeting were read and adopted.

The following report was then presented by Judge King:—

PHILADELPHIA LIBRARY, Oct. 19.—The undersigned, appointed tellers under a resolution adopted by the stockholders of the Library Company of Philadelphia, October 5, 1869, to receive and count the votes cast for and against four resolutions reported by the joint committee of stockholders and directors, and a fifth resolution offered by Hon. Henry M. Phillips, the said votes to be taken on the 19th day of October, 1869, between the hours of 10 A. M. and 4 P. M., and report the result, hereby report that they have attended to that duty, and do hereby certify as follows:—That 597 members voted in person or by proxy.

That 298 votes were cast in favor of the first resolution, and 293 against it.

That 256 votes were cast in favor of the second resolution, and 301 against it.

That 213 votes were cast in favor of the third resolution, and 362 votes against it.

That 268 votes were cast in favor of the fourth resolution, and 293 against it.

That 259 votes were cast in favor of the fifth resolution, and 316 against it.

And we do further report that the joint resolution, to wit:—

"*Resolved*, That the stockholders of the Library Company of Philadelphia do hereby accept the legacy of Dr. James Rush, according to the terms expressed in his will"—

—was agreed to, and that the remaining resolutions were disagreed to.

In witness whereof, &c. EDWARD KING.
WM. BIDDLE.

The foregoing report was accepted.

Mr. Frederick Fraley made some remarks in relation to the vote on the resolutions, and said, among other things, that a large number of persons were astonished at the result of the voting last Tuesday, and some very strong comments had been made. He thought that all discussions that might lead to any complication or ill-feelings on the matter should be avoided, and he was in favor of a fair, candid and open examination of the facts in the case, which will lead to a satisfactory solution of the question.

Mr. Fraley then presented the following:—

Resolved, That the further consideration of the bequest of Dr. James Rush be postponed, and that a committee, consisting of five members and the directors, be appointed to take the subject into consideration, who shall recommend to the members, at a meeting to be called by the directors, such action as they may deem expedient or necessary.

Mr. J. Ross Snowden also, in a brief speech, presented the following as a substitute for the preceding resolution of Mr. Fraley:—

Whereas, A majority of the stockholders of the Library Company of Philadelphia has accepted, by a stock vote, on the 19th inst., the legacy of the late Dr. James Rush, according to the terms expressed in his will; therefore,

Resolved, That the resolution adopted by the said vote be entered on the minutes of the Library Company as the acceptance by said company of the munificent and philanthropic bequest of Dr. Rush.

Resolved, That a committee, to consist of three stockholders and three directors, be appointed to co-operate with the executors of Dr. Rush in carrying into effect the provisions of the said will.

Resolved, That the early construction of a fire-proof building, to contain the valuable books, papers and other treasures of the Library Company, as well as those which will hereafter be obtained, is an object of the highest importance, and demands the immediate attention of the company and of the executor of the will of Dr. Rush.

Resolved, That a copy of the resolutions adopted by a vote of the stockholders, together with these proceedings, be sent to H. J. Williams, the executor of Dr. Rush.

The vote was then taken upon Mr. Snowden's substitute, when it was rejected.

The vote upon the original resolution of Mr. Fraley being then taken, the resolution was carried.

Upon motion adjourned.

THE RUSH BEQUEST.

The meeting of the stockholders of the Philadelphia Library Company, held yesterday, to vote on the resolutions concerning Dr. Rush's bequest, is regarded by many as not settling the question finally. Here is a communication on the subject from a shareholder who has given much attention to the subject:

Messrs. Editors:—The vote of the stockholders of the Philadelphia Library yesterday has made their acceptance of this bequest more doubtful than ever. As the results may not be understood without a reference to the resolutions, allow me to give them, as follows:

1st. The acceptance was carried by a majority of 5 votes, out of 591 polled; 378 shareholders not voting at all.

2d. A division of the Library Building was rejected by 45 majority.

3d. The appointment of a committee to procure the legislation made necessary by Dr. Rush's will was defeated by 149 majority.

4th. To return thanks to Dr. Rush and his executor was defeated by 25 majority; and

5th. To make the acceptance conditional upon a division of the buildings was rejected by 59 majority.

The first was carried by the votes of several who also voted for the fifth, which was intended as in opposition; but as the will makes legislation an absolute necessity, a condition precedent to the conveyance of the lot to the Library Company, the refusal to have such is virtually a rejection of the bequest, and this is further strengthened by the rejection of the merely formal vote of thanks for the bequest. Let the Executor *now* do his duty; erect such a building as the will directs, and *then*, if the Library Company will procure the legislation necessary for the alteration of their charter as directed by Dr. Rush's will, convey it to the company; but until then, let there be no more agitation and strife on this subject.

The safe course to be pursued at the meeting to-morrow will be such as will promote this result. A SHAREHOLDER.

The reasoning in this statement of the case as it stands seems to be sound. At all events, there was a large minority that voted against the resolution of acceptance—mainly on the ground that postponement was most advisable—and this minority will probably still insist that nothing further can be done until the building is erected and the required legislation is obtained.

The Philadelphia Library and Dr. Rush's Will.

The result of the vote polled by the stockholders of the Library Company of Philadelphia furnishes evidences of "disjointed thinking" on their part more atrocious than that which generally characterizes the newspapers of the day. In a very close poll, it has been decided by a majority of five votes that the stockholders will accept the legacy of Dr. Rush "according to the terms expressed in his will." This means that the majority of those who voted are willing to blindly assume all the consequences which are to result from the acceptance of the bequest. But whilst they have thus determined, they have very inconsistently declared, by the non-acceptance of another resolution, that they will not appoint any committee to consult with the executor of Dr. Rush in carrying out the provisions of the will. They will not cooperate with the executor in "procuring such legislation as may be needed." They have also determined that, although they have accepted the legacy, no official notification of their action shall be transmitted to Dr. Rush's executor in order that he may have evidence that the Company has accepted the bequest made in the will. Having done that much, they have negatived an accompanying proposition that a letter transmitting the evidence of the acceptance of the bequest should "acknowledge the high appreciation by the Company of the confidence reposed in them by Dr. Rush." They have also refused to sanction a declaration in the same letter of their cordial willingness to unite in carrying out in the most beneficial way his philanthropic intention. Reduced to the plainest and most simple proportions, it appears that the stockholders of the Library Company are willing to accept Dr. Rush's legacy, but that they will do nothing to assist the executor in his embarrassing duty. They will have no communication with him, and, if he should apply to the General Assembly for the proper legislation, they will not signify their assent nor will they pledge themselves not to oppose him. Furthermore, they are not grateful for Dr. Rush's bequest, and will not promise to do more than they can be called upon to do by law. These results are strange, but they are the consequence of "disjointed thinking," as much of the committee of directors and stockholders as of the stockholders themselves when they came to deposit their votes. In order to temporize between a fair, open course, and what they thought an expedient one, the committee had recommended a set of resolutions which were intended to reconcile opposing views. The resolution in the first place for the acceptance of the bequest was hampered by another which suggested that there might be two libraries, two buildings, and, we might say, two interests. In order to get possession of Dr. Rush's money it was suggested that the stockholders might honestly agree to go down to Moyamensing and yet *not* go. It would be a sufficient compliance, they thought, with Dr. Rush's will, to banish their old books to Broad and Carpenter streets; whilst in a new fireproof building, either at Fifth and Library, or, more likely, in another part of Broad street, they would keep their novels, reviews, magazines, newly issued books of all kinds, and perhaps their "journals of disjointed thinking" if they dare to take any of them beneath their roof. We think that it is to the credit of the stockholders that they rejected this evasive and dishonest proposition. It certainly is not what Dr. Rush could have expected, and it would have been a disgrace to the Company to have evaded its responsibility.

By the vote on the second and third resolutions offered by the committee, and also by the vote upon the resolution offered by Hon. Henry M. Phillips, it has been determined at least that the stockholders are not willing to resort to subterfuges which possibly they might legally employ, but which honorably they cannot. They have swallowed the bait. They have determined to banish themselves down town. They will wait with calmness the action of the executor of Dr. Rush, who, in compliance with "his wise discretion" and the eccentric verbal commands of the testator, has determined that the library shall be accommodated in the neighborhood of the Moyamensing Prison. In the course of a century, when "the Neck" becomes populous, and when warehouses, manufactories and mansions fill up the frightful chasm of desolation which now exists between League Island and the depot of the Philadelphia, Wilmington and Baltimore Railroad Company, the situation at Broad and Carpenter streets will probably be considered tolerably convenient. But it never can be central. Long before that time, squares, streets, and houses, will stretch out to Mount Airy and Chesnut Hill, and the Philadelphia Library building will be decidedly and most unfashionably down town.

Philadelphia, April 2d 1870.

Sir:

A Meeting of the Committee of Stockholders and Directors of the

Philadelphia Library Company,

appointed on the subject of the Bequests of the late Dr. James Rush, will be held in the Directors' Room of the Library Building, on Tuesday next, the 5th inst at 12 o'clock.

Respectfully Yours,

Lloyd P. Smith

AN ACT

RELATIVE TO THE RIDGEWAY BRANCH OF THE PHILADELPHIA LIBRARY.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That the Library Company of Philadelphia be, and they are hereby authorized to act as trustees for the Ridgway branch of the Philadelphia Library and the trusts pertaining thereto, under the last will and codicils of James Rush, late of the City of Philadelphia, Doctor of Medicine, upon the conditions and provisions therein contained, without limitation as to the yearly value or income of the said trust estate, but in such manner that the real and personal property of the company, including such books, pictures, statues and other works of literature and art as now are or shall hereafter be held by them in their own right, or on any other of [or] different trusts, shall be in no wise affected thereby, but shall remain and be under their own entire and exclusive control and disposition; and the said company are hereby empowered, after acceptance of this act by the members of the said company, to apply from time to time to the Court of Common Pleas for the city and county of Philadelphia, for such further amendments to the charter of the company as may be necessary to carry into effect the conditions and provisions of the said will and codicils in accordance with the directions of this act.

B. B. STRONG,
Speaker of the House of Representatives.

CHAS. H. STINSON,
Speaker of the Senate.

Approved the twenty-third day of February, Anno Domini one thousand eight hundred and seventy.

JNO. W. GEARY.

PROPOSED AMENDMENTS TO THE CHARTER OF THE LIBRARY COMPANY OF PHILADELPHIA.

I. The Library Company of Philadelphia shall hereafter be held and taken to possess all such powers and capacities as may be necessary to enable them to act as trustees under the will of the late Dr. James Rush, according to the provisions of an Act of the General Assembly of the Commonwealth, approved on the twenty-third day of February, one thousand eight hundred and seventy (1870), entitled "An Act relative to the Ridgway Branch of the Philadelphia Library."

II. So long as the Library Company shall act as such trustees, they shall do so under the following limitations and conditions:

First. Not more than one-fourth of the Directors of the Library shall belong to any one of the three learned professions of law, theology or medicine; but this shall not operate so as to exclude from re-election any of those who were members of the board at the time of the death of the said Dr. James Rush.

Second. The number of shares in the Library shall be limited to those actually issued at the time of the death of Dr. Rush; but the managers by their by-laws, shall have the authority to allow any respectable persons depositing an amount and paying an annual sum, to be fixed by the Board of Managers, to have the full and free use of the Library as completely as if they were shareholders.

Third. The Library shall not connect themselves with any other body, corporate or politic.

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LIBRARY COMPANY.

An adjourned meeting of the Members of the LIBRARY COMPANY OF PHILADELPHIA will be held on WEDNESDAY, the 25th of May, at 12 M., to receive the report of the Joint Committee appointed at a meeting October 21, 1869, and take action thereon; and also to consider the question of the acceptance of an act of Assembly approved February 23, 1870, entitled "An act relative to the Ridgway Branch of the Philadelphia Library," to authorize amendments to the charter of the Company.

By order of the Board of Directors.

WILLIAM E. WHITMAN,
Secretary.

Copies of the act of Assembly may be had of the Librarian. my6-ftu6t

May 25/70

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CITY INTELLIGENCE.

THE PHILADELPHIA LIBRARY.

A Special Meeting of the Stockholders to Consider the Acceptance of an Act of the Legislature.

In accordance with the announcement, a meeting of the stockholders of the Philadelphia Library was held at noon to-day to consider the acceptance of a special act of the Legislature passed last winter, with reference to the Ridgway branch and the trusts pertaining thereto. This act, which has been recommended to a favorable consideration by a joint committee of the stockholders and directors, is as follows:—

Section 1. Be it enacted, etc., That the Library Company of Philadelphia be and they are hereby authorized to act as trustees for the Ridgway branch of the Philadelphia Library and the trusts pertaining thereto, under the last will and codicils of James Rush, late of the city of Philadelphia, Doctor of Medicine, upon the conditions and provisions therein contained, without limitation as to the yearly value or income of the said trust estate, but in such manner that the real and personal property of the company, including such books, pictures, statues, and other works of literature and art as now are or shall hereafter be held by them in their own right, or on any other of [or] different trust, shall be in no wise affected thereby, but shall remain and be under their own entire and exclusive control and disposition; and the said company are hereby empowered, after acceptance of this act by the members of the said company, to apply from time to time to the Court of Common Pleas for the city and county of Philadelphia, for such further amendments to the charter of the company as may be necessary to carry into effect the conditions and provisions of the said will and codicils in accordance with the directions of this act.

The amendments which it is proposed to attach to the charter of the company are as follows:—

I. The Library Company of Philadelphia shall hereafter be held and taken to possess all such powers and capacities as may be necessary to enable them to act as trustees under the will of the late Dr. James Rush, according to the provisions of an act of the General Assembly of the Commonwealth, approved on the twenty-third day of February, one thousand eight hundred and seventy (1870), entitled "An act relative to the Ridgway Branch of the Philadelphia Library."

II. So long as the Library Company shall act as such trustees, they shall do so under the following limitations and conditions:—

First. Not more than one-fourth of the directors of the library shall belong to any one of the three learned professions of law, theology, or medicine; but this shall not operate so as to exclude from re-election any of those who were members of the board at the time of the death of the said Dr. James Rush.

Second. The number of shares in the library shall be limited to those actually ifsued at the time of the death of Dr. Rush; but the managers by their by-laws, shall have the authority to allow any respectable persons depositing an amount and paying an annual sum, to be fixed by the Board of Managers, to have the full and free use of the library as completely as if they were shareholders.

Third. The library shall not connect themselves with any other body, corporate or poli tic.

The meeting was called to order at noon by Hon. Eli K. Price. William E. Whitman, Esq., acted as Secretary.

A quorum of members was announced as being present, when the minutes of the last meeting were read and approved.

Frederick Fraley, Esq., of the joint committee of the stockholders and directors, stated on behalf of the committee that it had held several meetings, the result of which was the formation of the above act of Assembly, which is now a law of the State. His duty was to move the acceptance of the act and the accompanying amendments, which had been reported upon favorably by the committee.

Henry M. Phillips, Esq., said, in presenting the following resolutions adopted by the committee, he expressed the unanimous sentiment of that body:—

Resolved, That the Library Company do accept the provisions of the Act of Assembly approved February 23, 1870, entitled "An Act relative to the Ridgway Branch of the Philadelphia Library."

Resolved, That the Directors be requested to apply to Court of Common Pleas of Philadelphia county for the amendments [printed above] to the charter of the company.

Resolved, That in assuming the administration of this munificent endowment, the Library Company of Philadelphia desire both to record their high appreciation of the confidence reposed in them by Dr. Rush, and to express in behalf of the community at large a proper acknowledgment of the great benefit which the testator designed for the advancement of literature and science in this city.

Resolved, That the Chairman be requested to communicate to Henry J. Williams, Esq., these resolutions, and to convey to him at the same time the thanks of the Library Company for his long and useful services as a Director, and the warm interest he has always taken in their welfare.

Resolved, That the joint committee be discharged from the further consideration of the subject.

The resolutions were unanimously adopted, and the meeting adjourned.

The Age.

THURSDAY, MAY 26, 1870.

DR. RUSH'S BEQUEST.

Some Satisfactory Conclusions by the Philadelphia Library Company—Measures Preliminary to Carry Out the Objects of the Will--The Doings Yesterday.

Dr. Rush's benevolent bequest, while it devoted the use of so great an estate as he left to the literary poor, occasioned a great deal of trouble. It was given to the Philadelphia Library Company, if it should comply with certain provisions. To this end many resolutions were offered, and as repeatedly rejected by the Company. At the meeting held some months ago, Messrs. Frederick Fraley, Henry M. Phillips, Edward King, James S. Biddle and J. Dickinson Logan, were appointed to submit to the Company such measures as they deemed proper, by the adoption of which the Company could accept and carry out the trust left it. For the purpose of hearing their report, the stockholders met again yesterday.

PRELIMINARIES.

Hon. Eli K. Price occupied the Chair, and William E. Whitman acted as Secretary.

The latter, in the record of the last business meeting, read the resolutions relative to the appointment of the Joint Committee.

WHAT MR. FRALEY SAID.

Mr. Fraley then said: In order to carry out the resolution which has just been read, the joint committee of stockholders and directors of the company had a number of meetings, and they resulted in the adoption of the form of an act of Assembly, which would enable the Library Company to take charge of these bequests—a form that they believe will be satisfactory to the members of the Company. The bill was passed, and is now a law of this Commonwealth. In addition to that they have prepared and agreed upon certain amendments, which are necessary to be made to the charter of the com-

pany, in order that this act of Assembly may be executed, and the Library Company be clothed with the powers needed for the work that has been entrusted to them. I have been directed by the committee to present this act to the meeting, and to recommend its acceptance, and to recommend also the adoption of the proposed amendments.

This is the act:

THE ACT OF ASSEMBLY.

SECTION 1 *Be it enacted, &c.*, That the Library Company of Philadelphia be, and they are hereby authorized to act as trustees for the Ridgway branch of the Philadelphia Library and the trusts pertaining thereto, under the last will and codicils of James Rush, late of the city of Philadelphia, Doctor of Medicine, upon the conditions and provisions therein contained, without limitation as to the yearly value or income of the said trust estate, but in such manner that the real and personal property of the Company, including such books, pictures, statues and other works of literature and art as now are or shall hereafter be held by them in their own right, or any other of (or) different trusts, shall be in nowise affected thereby, but shall remain and be under their own entire and exclusive control and disposition; and the said Company are hereby empowered, after acceptance of this act by the members of the said Company, to apply from time to time to the Court of Common Pleas for the city and county of Philadelphia for such further amendments to the charter of the Company as may be necessary to carry into effect the conditions and provisions of the said will and codicils, in accordance with the directions of this act.

AMENDATORY MEASURES.

The proposed amendments to the charter are as follows:

I. The Library Company of Philadelphia shall hereafter be held and taken to possess all such powers and capacities as may be necessary to enable them to act as Trustees under the will of the late Dr. James Rush, according to the provisions of an act of the General Assembly of the Commonwealth approved on the 23d day of February, 1870, entitled "An act relative to the Ridgway branch of the Philadelphia Library."

II. So long as the Library Company shall act as such trustees they shall do so under the following limitations and conditions:

First. Not more than one-fourth of the Directors of the Library shall belong to any one of the three learned professions of law, theology or medicine; but this shall not operate so as as to exclude from re-election any of those who were members of the Board at the time of the death of the said Dr. James Rush.

Second. The number of shares in the Library shall be limited to those actually issued at the time of the death of Dr. Rush; but the Managers, by their By-laws, shall have the authority to allow any respectable person depositing an amount, and paying an annual sum, to be fixed by the Board of Managers, to have the full and free use of the Library as completely as if they were shareholders.

Third. The Library shall not connect themselves with any other body, corporate or politic.

CHEERING HARMONY.

Mr. Phillips stated that the conclusions of the Joint Committte had been arrived at with entire harmony and unanimity by the members. He then offered these resolutions:

THE ACCEPTANCE.

Reolved, That the Library Company of Philadelphia do accept the provisions of the act of the Commonwealth approved on the 23d day of February, 1870, entitled, "An Act Relative to the Ridgway Branch of the Philadelphia Library." Adopted.

Resolved, That the Directors be requested to apply to the Court of Common Pleas of Philadelphia county for the following amendments to the charter of the Company (being those given above). Adopted.

THANKS RETURNED.

Resolved, That in assuming the administration of this munificent endowment, the Library Company of Philadelphia desire both to record their high appreciation of confidence reposed in them by Dr. Rush, and to express in behalf of the community at large, a proper acknowledgment of the great benefit which the testator designed for the advancement of literature and science in this city.

Resolved, That the Chairman be requested to communicate to Henry J. Williams, Esq., these resolutions, and to convey to him at the same time the thanks of the Library Company for his long and useful services as a Director, and the warm interest he has always taken in their welfare.

Resolved, That the Joint Committee be discharged from the further consideration of the subject.

The meeting then adjourned.

The Press.

TUESDAY, JUNE 1, 1869.

THE CITY.

WILL OF THE LATE JAMES RUSH, M D.

The will of the late Dr. James Rush, of this city, was admitted to probate yesterday, and the value of the estate, &c., is estimated at about a million dollars.

The following is a *verbatim* copy of the important document:

Be it remembered, That I, James Rush, of the city of Philadelphia, M. D., do make this my last will and testament, hereby revoking all others by me heretofore made, in manner following—that is to say:

I will and direct that all my just debts, which will be found very few in number and insignificant in amount, shall be paid by my executor as soon as possible.

It is my intention, by a codicil or codicils to this my will, to give considerable legacies, annuities, and devises to different persons, but as I desire to take some time for reflection on this subject, and as I have made up my mind as to the disposition of my residuary estate after the payment of these legacies, annuities, and devises; now, therefore, I do hereby give, bequeath, and devise my whole estate, real and personal, legal and equitable, whatsoever and wheresoever the same may be, unto my brother-in-law, Henry J. Williams, of the city of Philadelphia, his heirs and assigns, to be held by him for and upon the following trusts and purposes, and for and upon no other use, trust, or purpose whatever—that is to say:

In trust, after paying for, providing for, and complying with all legacies, annuities, gifts, bequests, and devises, declarations, and intentions which may be contained and expressed in any codicil or codicils to this, my last will and testament, which I may hereafter make (to be signed by me at the end thereof), whether the same be formally drawn or not; to have and to hold the whole residue and amounts of my estate, real and personal, whatsoever and wherever the same may be, for the following uses and purposes, viz:

In trust, to select and purchase a lot of ground not less than 150 feet square, situate between Fourth and Fifteenth and Spruce and Race streets, in the city of Philadelphia, and thereon to erect a fire-proof building sufficiently large to accommodate and contain all the books of the Library Company of Philadelphia (whose library is now at the corner of Fifth and Library streets), and to provide for its future extension according to plans, directions, and specifications which I shall hereafter make or give; but if I should not make or leave any such plans, directions, or specifications, then to erect the same according to his best judgment and to the views which I have expressed to him. It is my wish that this building should be exceedingly substantial, completely fire-proof, without any large, lofty, or merely-ornamental halls or lecture-rooms; the whole interior to be divided in such way as to contain the greatest number of books, to be well lighted and so arranged as to be of easy and convenient access.

AND UPON THIS FURTHER TRUST, so soon as this building is completed and ready for occupation, then in trust to convey the same, with the lot of ground whereon it is erected, unto "The Library Company of Philadelphia" aforesaid, and their successors, for the uses and purposes of their library, and for no other use or purpose whatever.

Provided, however, that before any such conveyance shall be made to the said library company they shall, either by an alteration in their charter or in some other way satisfactory to my executors, bind themselves and their successors to conform to and comply with the following express conditions, and any others I may hereafter impose, under which they are to hold the said property and all other bequests and devises herein or hereafter given to them:

First. That the said Library Company shall not cause, allow, or permit any lectures, public orations, or oral addresses or exhibitions of any kind to be delivered, given, or to take place on the said lot of ground, or in the said building; nor shall they cause, allow, or permit the formation of any museum, cabinet, gallery, or collection of natural history, statuary, sculpture, portraits, or paintings thereon or therein, nor shall they use, apply, or expend any funds, derived from me, or under any will or codicil thereto, in procuring or defraying the expenses of any such lectures or exhibitions, public orations, or oral addresses, or in the establishment or support of or for additions to any such museum, cabinet, gallery, or collection, paintings, or portraits (and especially that of the testator) on the said lot and in the said building or elsewhere.

These are objects foreign to and inconsistent with the legitimate purposes of a public library, and it is only for the preservation, extension, and free and convenient use of such a library, without any ambitious or pretentious display, that it is desired to make provision.

Second. That all the accounts of the receipts and expenditures of the estates aforesaid shall be kept separate and distinct from all other accounts of the said library company, and shall all be headed and kept as the accounts of "*The Ridgway Branch of the Library Company of Philadelphia*," so that it may be always easily and certainly ascertained whether the application of those estates and the income derived therefrom has been in accordance with the provisions of this my will.

And I further will, direct, bequeath, and devise that whenever the said building shall have been completed and transferred to the said library company, and the preliminary conditions complied with, then my said executor shall assign, transfer, and convey, by one or more deeds and instruments, all the rest and remainder of my residuary estate not laid out and expended in the purchase of the lot and the construction of the building aforesaid, and in the legal and customary charges and expenses, unto the said library company, to be held and used by them and their successors, for the following uses, trusts, and purposes:

First. The trust to keep the whole of the real estate granted and conveyed to them by my executor, in good order and repair, and to make from time to time such additions to the library building as may be found necessary for the extension and preservation and convenient use of the said library and all additions thereto.

Second. The trust, after paying all necessary taxes, charges, and expenses incident to the said property, to set aside annually ten per cent. of the clear net income, to form a contingent fund, to be invested, and the interest added to the principal, which fund, or so much thereof as may be required, shall be applied—

First, to build upon, improve, alter, and renew any lands and tenements hereby devised to the said company, so as to increase the income derived therefrom.

Second, to make good and replace any losses from the failure of any investments made or from the property hereby bequeathed for the said company; and,

Third, whenever the said contingent fund shall amount to $30,000, then to pay over and apply the whole surplus beyond the said $30,000 for the general purposes to which the income of this residuary estate is herein devised to be applied.

Third. In trust to pay all necessry salaries of the librarian and his assistants, and the expenses of binding and preserving the books of the whole library, making cheap catalogues, and all charges incident to the care and management. The said library is to be kept open from nine o'clock A. M. until at or near sunset, except on Sundays and holidays.

Fourth. And in trust, after complying with and fulfilling the provisions, trusts, and purposes hereinbefore contained and expressed, to apply the remainder or surplus of the said net annual income, or so much thereof as may be necessary or desirable, to the increase and extension of the said library.

But I direct that no portion of my real estate aforesaid shall be sold by the library company for ten years after my death, nor then, unless it be absolutely necessary for the purposes of this trust, even if additional income should be derived therefrom; and in no case, unless the said sales are sanctioned by a decree of the Orphans' Court or a court of equity, which shall decide such sales are not in contravention of the spirit of this my will.

And in order to enable my executor to carry out the directions of this my will, I hereby authorize and empower him to grant, bargain, and sell any part or parts of any real estate, at public or private sale, for any price or consideration, with any restrictions, reservations, covenants, or conditions, for cash or on credit, taking security on the premises for the balance of the purchase moneys; or to let on ground rent, mortgage, exchange, or make partition of the same, or any part or parts thereof; and to seal, execute, and deliver all deeds, consignments, mortgages, assurances, or other instruments, necessary for the purposes aforesaid, without any obligation on the purchaser or purchasers to see to or be responsible for the application of the purchase money or other consideration, or for the propriety of the exercise of this power.

And I further will, desire, and direct that all investments, if any should be made by my executor, and all those which may at any time hereafter be made by the said library company from the principal or income of my said estate shall be in ground rents or other real estate in the State of Pennsylvania, or in bonds or in mortgages upon property within the said State, or in loans of the said State, or of the United States; and, lastly, I hereby appoint my brother-in-law, Henry J. Williams, of the city of Philadelphia, executor of my last will and testament.

In witness whereof I have hereunto set my hand and seal this 26th day of February, A. D. 1860.

JAMES RUSH.

Witnesses—Wm. F. Judson, H. Farmer, R. S. Hunter, J. S. Farmer.
October 16, 1865.

Be it Remembered, That I, James Rush, of the city of Philadelphia, M. D., do make this codicil to my last will and testament, dated the twenty-sixth day of February, A. D. eighteen hundred and sixty (1860), in the manner following—that is to say:

Whereas, By my said last will and testament, I have provided that the bequests and devises to the Library Company of Philadelphia are to be held under the conditions and restrictions therein contained, and any others which I might thereafter impose; now, therefore, in accordance with and in execution of that provision, I add and impose the following conditions, restrictions, and directions:

First. One of my objects in giving my residuary estate for the use of the said library company was to express my respect and regard for my father-in-law, the late Jacob Ridgway, and my affection for and gratitude to his daughter, Phœbe Anne Rush, by erecting to their memories a monument which I hope will prove more durable than any other grateful record I could make, and be infinitely more useful to the community. As it was from them I derived the greater part of my property, which (under the special and prudent management of faithful and trustworthy agents) has enabled me to elevate, happily, and undisturbed, the latter part of my life to pursuits of scientific inquiry, which I have designed to be more beneficial than the mere common enjoyment of an ample fortune, it is both just and proper that I should thus employ it, the more especially as Mrs Rush had led me to believe that if she had survived, she would have applied it to a similar purpose. Now, in order to carry out this intention in a public and permanent form, I direct my executor to have a marble slab, with the following inscription, on a plain ground, with a border of simple moulding, without any surrounding ornaments, placed and maintained on some appropriate part of one of the interior rooms of the new library building, in which my private library and other personal effects are to be preserved,

The Ridgway Branch
of the
Philadelphia Library.
A monument to the memory of
Jacob Ridgway,
And of his daughter,
Mrs. Phœbe Anne Rush.

Second. I direct my executor to have inserted in the act of Assembly which will be required to carry out the provisions of my will and codicils, clauses enacting—

First, that not more than one-fourth of the directors of the library shall belong to any one of the three learned professions, of law, theology, or medicine. This clause is, however, not intended to exclude any of the present members from re-election.

Second, that the number of shares in the library shall be limited to those actually issued at the time of my death. But the managers, by their by-laws, shall have the authority to allow any respectable person depositing an amount and paying an annual sum to be fixed by the board of managers, to have the free use of the library, as completely as if they were shareholders.

Third, That the library shall not connect themselves with any other body, corporate or politic; my residuary estate will form a large fund for the use of the library, and I wish them to be free from every inducement to go beyond what I consider the legitimate objects of a library company.

Third. I will add that my reasons for choosing the Philadelphia Library Company for my residuary legatee and devisee are because it has always been conducted quietly and unobtrusively, steadily pursuing the appropriate objects for which such libraries are established, keeping entirely aloof from the excitement of politics and of other means whereby public bodies so frequently seek to obtain an evanescent and mischievous notoriety, and because during my early life I derived great pleasure and advantage from the use of its books, and from the readiness and civility with which they were always furnished me.

Fourth. I understand that the managers of the library company have never applied any of its funds to defray the expenses of the very simple refreshments of which they are accustomed to partake at the monthly meetings of the board, but have invariably paid them from their own personal means. I highly approve of this course, which I fear is not very usual, and in order that their example may be followed by their successors, I direct that no part of the funds of the Ridgway branch of the Philadelphia Library shall ever be used or expended in providing refreshments, lunches (so called), feasts, or entertainments for managers, visitors, shareholders, or for any other persons whatever.

Fifth. I do not wish that any work should be excluded from the library on account of its difference from the ordinary or conventional opinions, on the subjects of science, government, theology, morals, or medicine; provided it contains neither ribaldry or indecency. Temperate, sincere, and intelligent inquiry and discussion are only to be dreaded by the advocates of error. The truth need not fear them, nor do I wish the Ridgway Branch of the Philadelphia Library to be encumbered with the ephemeral biographies, novels, and works of fiction or amusement, newspapers, or periodicals which form so large a part of the current literature of the day. The great object of a public library is to bring within the reach of the reader and the student works which private collections do not and cannot contain, and which in no other way could be acceptable to the public. Its excellence will depend not upon the number of its volumes, but upon their intrinsic value, and I wish this principle to be carried out by the managers, who, I hope, will never be influenced by the too common for the mere numerical superiority.

Sixth. I give and bequeath all my pictures, my private library, my manuscripts, copyrights, and papers, and also those of my father, Dr. Benjamin Rush (in my profession) to the library company, to be by them placed in a room in the new building, and there safely kept. The books may be used as the other books of the library company, but this room is not to be opened to gratify idle or objectless curiosity.

Seventh. I will and direct that the building to be erected for the Philadelphia Library Company under the provisions of my will shall have a basement story, of a height not less than eight feet six inches, above the level of the pavement at its front, leaving the height of such basement in the rear to depend upon the grade for the drainage of the lot. The entrance to the front of the story immediately above the basement shall be by a broad flight of stone steps. Other entrances may be made in such places and manner as convenience or necessity may require.

Eighth. If the Philadelphia Library Company should omit or decline to accept my residuary estate on the terms and conditions in my will and codicils contained, or fail to comply with any of the preliminary stipulations and directions therein mentioned, then I give and devise the whole residue of my estate, real and personal, whatsoever and wheresoever the same may be, after paying and securing all annuities, bequests, and legacies, and devises other than those to the said library company in this or any future codicil contained, unto Henry J. Williams, my executor, in my said last will named, his heirs, and executors, and administrators in trust therewith, to found and endow a public library entirely distinct from and indepen-

dent of the Philadelphia Library Company, to be named and called the Ridgway Library, under the rules, regulations, conditions, and stipulations in my said last will and the codicils thereto expressed and contained. I wish that the greater part of my estate may be spent in completing the new library building. The annuities as they expire and fall into my residuary estate will be amply sufficient for all the legitimate purposes of a library.

Ninth. By my last will and testament herein-before referred to (dated February 26, 1860) I have given, bequeathed, and devised my whole estate, real and personal, unto Henry J. Williams, my executor, his heirs, executors, administrators, and assigns, in trust; in the first place to provide for, pay, and comply with all legacies, gifts, annuities, bequests and devises, declarations and intentions which may be contained or expressed in any codicil to the said last will and testament, which I might therefore make, to be assigned by me at the end thereof, whether formally drawn or not; now therefore, in pursuance of the above provision, I hereby direct, declare, bequeath, and devise as follows:

Tenth. I give and bequeath unto Mary Lee, a domestic in my service, the sum of two hundred dollars, to be paid to her within six months after my decease; and unto Anne Knee, my faithful attendant for some years, an annuity or yearly sum of two hundred dollars, payable half yearly so long as she shall continue single and unmarried. The said legacy to Mary Lee and the annuity to Anne Knee to be paid to them only in case they shall respectively remain in my service until the day of my death, and in the service of my executor at the same rate of wages which they receive from me so long as he may require them to do so.

Eleventh. I give and bequeath unto Mrs. Catharine Souder, widow of Jacob Souder, deceased, an annuity or yearly sum of two hundred dollars, to be paid to her half yearly so long as she shall remain a widow.

Twelfth. I give and bequeath unto Thomas Craven, who has been for many years the faithful agent of my estate, an annuity or yearly sum of six hundred dollars, to be paid to him half yearly for and during his natural life.

Thirteenth. I give and bequeath unto Miss Caroline Little and her sister, Mrs. S. H. Spruitt, and to the survivor of them an annuity or yearly sum of eighteen hundred dollars, to be paid to them and the survivor of them so long as they or either of them shall continue unmarried, and if either of them should marry after my death then the whole of the said annuity shall be paid to the other so long as she shall continue unmarried as aforesaid.

Fourteenth. I give and bequeath unto Miss Mary Ritchie (the sister of Captain Ritchie, United States Navy), an annuity or yearly sum of one thousand dollars, to be paid to her half yearly, so long as she shall remain single and unmarried.

Fifteenth. I give and bequeath unto each of my nephews and nieces, Benjamin, Maria S., Catharine, and Richard H. Rush, children of my brother, the late Richard Rush, an annuity or yearly sum of three hundred and sixty dollars, to be paid half-yearly to each of my said nephews for and during their natural lives, and to each of my said nieces so long as they respectively shall continue single and unmarried, without any survivorship. These several annuities, with one of a similar amount which I intended to have given to their brother, the late J. Murray Rush, make together the sum of eighteen hundred dollars per annum, which I had designed for the children left by my brother, Richard Rush.

Sixteenth. I give and bequeath unto my niece, Mrs. Georgiana Clark, wife of E. A. Clark, Esq., and daughter of my sister, Mrs. Emily Cuthburt, of Laneraise, Canada East, an annuity or yearly sum of eighteen hundred dollars, to be paid to her half yearly so long as she shall continue the wife or widow of her present husband.

Seventeenth. I give and bequeath unto my nephew, Major Robert Manners, and to my niece, Julia Manners, children of my sister, Mrs. Mary Manners, now residing near Rochester, Kent, England, annuities or yearly sums of nine hundred dollars each, to be paid to my said nephew half yearly, for and during his natural life, and to my said niece so long as she shall continue single and unmarried.

Eighteenth. I give and bequeath unto my niece Julia W. Biddle, wife of Col. Alexander Biddle, of the city of Philadelphia, and daughter of my late brother Samuel Rush, an annuity of eighteen hundred dollars, to be paid to her half yearly so long as she shall continue the wife or the widow of her present husband.

Nineteenth. I give and bequeath my four silver dishes to my brother-in-law John J. Ridgway, now residing in Paris.

Twentieth. I give and bequeath all the personal wearing apparel, watches, jewelry, trinkets, &c., of my late wife and of myself to my executor, to be disposed of according to verbal directions which I have given him, but without any obligation to account to any person whatever for them or any of them, or for the disposition thereof.

Twenty-first. As the delays of the law, of the courts, or of the lawyers may prevent me from disposing in my lifetime of my share of my brother, William Rush's estate, in case I should not have done so in my lifetime, I give and devise the whole thereof to my neice, Mrs. Georgiana Clark, daughter of my sister, Mrs. Emily Cuthburt, her heirs, executors, and administrators, as a remuneration for her mother's share of my mother's estate, of which she was thoughtlessly and ungenerously deprived.

Twenty-second. I will and direct that all legacy or collateral inheritance taxes chargeable upon the bequests, legacies, and annuities given or bequeathed by my last will and testament shall be paid from and out of my residuary estate, and that all the annuities therein and thereby given shall commence from the day of my death. I also will and direct that all the annuities which I have given, or may hereafter give to any married lady, shall be for their sole and separate use, freed from all debts, obligations, or control of their respective husbands; and that all annuities which I have given to any female, married or single, or which I may hereafter give them, shall be payable to them personally, or to their own order or receipt, signed and dated not more than three months before the same falls or becomes due, and shall not be subject to any anticipation, lien, or incumbrance, nor to any transfer or assignment by their own act, or by the act or operation of law, or otherwise. And in case any of the said female annuitants shall attempt to alien, anticipate, or encumber, or assign her annuity or cause, or permit, or suffer, or procure the same, then, and in that case, I authorize and empower my executor, in his discretion, to withhold the semi-annual payments thereof (which shall fall into and become part of my residuary estate) until the attempted alienation or anticipation, lien or encumbrance, transfer or assignment shall be cancelled, released, given up and annulled. And I further will and direct that all the annuities which I have given, or which I may hereafter give shall, upon the expiration of the periods which they were respectively given, fall into and become part of my residuary estate.

Twenty-third. I direct my executors to dispose of the perishable part of my furniture, but not to have any auction upon any part of my premises. I wish it sold as quietly as possible, and would prefer a private sale, even if it were not so productive. I also direct my executor to keep my residence, No. 1914 Chestnut street, for at least two years, unless he can dispose of it at present sale for a price which, in his sole discretion, he may think reasonable. At the expiration of that time he may dispose of it as he may think best.

Twenty-fourth. I have given verbal directions to my executor to have my funeral as private as possible, without any of the ordinary external indications of mourning.

No invitations are to be sent except to my *nearest* relations, and I specially desire that I may be buried in silence. If circumstances will permit it, I should be glad that the remains of the late Jacob Ridgway, of his daughter, my late wife, and of myself, should be removed to the new library building, when it is completed, and be placed in some spot within the outward limits of the building, under a plain, simple tablet. The library itself is intended for their monument, and I want none for myself. If, however, the parties interested in the ground in which my father-in-law is buried should object to his removal, then I desire that my wife and myself may be placed in the new library building as above directed. The library will then be her monument, and I desire to lie by her side.

Twenty-fifth. And I further will and direct that if any of the devisees or legatees or annuitants herein named shall attempt, themselves, or aid, assist, or encourage others to question, dispute, litigate, or object to the validity or effect of any part or portion of my will, or any codicil thereto, or of any gift or devise therein mentioned, then, and in that case, all the clauses in my will or any

codicil thereto conferring any benefit upon the person or persons aforesaid shall stand and be revoked and annulled, and the same shall be paid and given over to the said library company.

Twenty-sixth. Events and circumstances occurring within the last six years have obliged me to make several changes in my will, and I should have preferred that all my testamentary dispositions should have appeared as a complete whole, instead of being contained in separate instruments; but at my age life is precarious, and were I to have them condensed, redrawn, and re-executed, the most important part of the whole might fall under the operation of the ill-conceived, inconvenient, and mischievous law (resulting from a narrow sectarian spirit) which voids all gifts to literary or religious institutions made and interpreted within a calendar month of the termination of a testator's life, no matter what his mental capacity may have been. To avoid the possibility of such a result, I must let the will as it is, and add other provisions as they may occur to me.

Twenty-seventh. If any annuitant in any codicil to my last will named, whose residence is in the United States of America, shall leave this country after my death to remain either temporarily or permanently abroad, I will direct that their respective annuities shall be suspended until their return; and the several half yearly payments becoming due during their absence shall fall into and become parts of my residuary estate.

Twenty-eighth. I desire my executor to be allowed a commission of three per cent. upon the administration of my estate; and, in the case of the death of my brother-in-law, Henry J. Williams, whom I have named as my executor in my last will, either before or after me, I nominate and appoint Colonel Alexander Biddle and Thomas Craven to be my executors in his room. They are not, however to assume the executorship, or be qualified therefor, until after his death, resignation, or refusal to act.

In witness whereof I have hereunto set my hand and seal this 16th day of May, Anno Domini 1866. JAMES RUSH. [Seal.]

Signed, sealed, published, and declared by Dr. James Rush above-named, as and for a codicil to his last will and testament, in our presence, who, in his presence and in presence of each other, at his request, have affixed our names as witnesses thereto.

J. S. FARMER, May 16, 1866. RICHARD S. HUNTER, May 16, 1866.

Be it remembered that I, James Rush, of the city of Philadelphia, M. D., do make this additional codicil to my last will and testament, dated the 26th day of February, A. D. 1860) eighteen hundred and sixty, in manner following—that is to say:

First. I have given and devised the greater part of my estate to my executor for the purpose of erecting for the Library Company of Philadelphia, a building not only large enough to contain their present books, but also their probable increase for many years to come. Now, as I do not desire that the library company shall have an income greater than is required to provide for the legitimate (not a competing) increase of the library and other current expenses (not to be so large as to invite extravagance and waste), for which purposes the sums to be set apart to secure the legacies and annuities given by my said will and testament will be sufficient, I hereby authorize and direct my said executor to expend the whole remainder of my estate in the purchase of a lot and the erection of the library building, construction of book-cases, &c., leaving the said company only an income sufficient to defray the ordinary and strictly appropriate expenses of such an institution.

I have observed that large annual incomes in corporate bodies almost invariably lead to wasteful extravagance, and cause the institutions to become the prey of schemers, who, under the specious cloak of liberality, or of being what is called public-spirited citizens, have no hesitation in spending the money of other people, in order to gratify their own vanity or to promote their private interests. Such persons [illegible] of their time in the distraction of change from one place of popular importance to another, that they have no opportunity for observation and reflection, to gain intellect enough to comprehend the purpose of books of knowledge, and therefore can be of no service, but rather the means of disturbing the quiet duties of a public library. Let them find instruction in its volumes with thankfulness and modesty, yet beware of admitting them to even a part of its government, or they will be sure, unless the managers are wise and watchful, by some manœuvre to direct the whole. They are consequential spendthrifts, who, under the plea of patriotic improvement and of ornamenting a city, misapply government taxes and embarrass the funds of scientific, literary, and charitable as well as moneyed institutions, over which, by popular artifice, they have gained a control. As a condition, therefore, of my will, let the managers and contributors join to exclude all such persons from the direction of the library company. It is from the quiet, unostentatious, and disinterested character of its directors, and of their management, that I have drawn the motives which induced me choose the Philadelphia Library Company as the heir to my estate; and I would add a very influential consideration, that, having always conducted its affairs with prudence and foresight, it has never by living beyond its means, in collecting more books than it has room for, been brought to the disgraceful pauper condition of those institutions which are constantly begging for thousands and drawing upon the public purse by fairs and lotteries, in order to erect splendid buildings or to pay debts rashly and inconsiderately incurred.

Second. I have in my will limited the extent of the lot to be purchased for the library building, as well as its locality, but as I desire that it shall have not only strength, durability, and accommodation, but also be of sufficient magnitude for any future or contingent, but not an ambitious or competing, increase of the library, and in order to prevent, if possible, its being torn down in twenty years and the lot sold at a speculative profit to suit the hyperbole of the times, I authorize and allow my executor, under a broad and thoughtful foresight, to increase the size of the lot and select any situation he may deem most expedient, without regard to any provision of my will or codecils. I know that an ostentatious library, to keep up with the progress of our country, collecting too many books, may be like an avaricious man who accumulates money to the ruin of both his modesty and his intellect But I have a forlorn hope that the mind may yet be improved beyond a patronage or even a toleration of those crowds of graver or more puerile fictionists who mislead the idle, and of those garbling compilers who overlook or corrupt the truth of fuller and more useful works by purloining from their pages, in attempting to abbreviate and render them popular for their own advantage.

Third. I have given the copyrights of all my works to the library company, and I will and direct that they shall, for the next half century, publish every ten years (and earlier and oftener if called for) an edition of five hundred copies of any or of all of them, so that they shall always have on hand a number sufficient to supply any demand which may be made for any number of them, at a price not exceeding the cost of publication. I leave additions and corrections in the printer's copies, preparatory to a subsequent edition which I imperatively require to be published exactly as they are left. The original parts of them have been written *without assistance*, and I wish to be alone responsible for all the faults of thought, division, definition, and style, and of my corrected orthography, as I consider it.

An editor sometimes joins himself to a work by a supposed emendation of it. Let him in a book of his own justly blame what he pleases in mine, but not attempt to suit it to any future time and manners Every writing should have its own times and manners. Let him present no imaginary typographical errors; let him strive to improve my spelling only when the world corrects its own redundancies, and confusions on that point. In our important faults it is bad morality, even in science and literature, to try to escape the charge of errors by turning them over to others for correction.

Fourth. In order to insure, as far as is in my power, the application of the various devises and bequests which I have made for the use and benefit of the library company, in accordance with my wishes and directions, I hereby devise, direct, will, and declare that the whole and every part of my estate, real and personal, given or devised for the use and benefit of the said library company, and all the books and furniture purchased by them with the income and proceeds thereof, shall be taken and held by them (whenever the same by the provisions of my will, or of any codicil thereto, shall come into their possession, and become subject to their control), as trustees, for the uses, objects, trusts, and purposes in my said will, and any codicil thereto

mentioned and expressed; and if the said library company shall in any respect violate or omit to comply with any of the provisions, conditions, or directing regulations or restrictions therein contained, then I will and direct that the Pennsylvania Company for Insurance on Lives and Granting Annuities, shall and may (or if they omit, neglect, or refuse so to do any citizen of the city of Philadelphia) apply to the proper courts of this Commonwealth to compel the said library company to comply with the provisions of my said will and codicils, or to remove them from the said trust, and transfer the whole real and personal estate aforesaid, including the library building, and all the books and furniture belonging to the Ridgway Branch of the Philadelphia Library, unto the said Pennsylvania Company for Insurance on Lives and Granting Annuities, or if they shall neglect or refuse to accept the trust, to some other trust company of Philadelphia, who shall take and hold the whole of the said estate, real and personal, library building, books, and furniture aforesaid, in trust to collect and receive the whole income thereof, and apply the same to the uses, objects, and purposes of my said will and codicils thereof: permitting, however, if in their wise discretion they shall think proper so to do, but not otherwise, the said Philadelphia Library Company to occupy the library building, and to take charge of the books, &c., of the Ridgway Branch thereof; provided they shall do so under the absolute direction and control of the new trustees, who shall strictly supervise and entirely control and direct all the expenditures of my estate in relation thereto: and who may at any time remove them from the said charge, if the library company shall not submit and conform to such control and direction.

Fifth. If at any time Mr. Thomas Craven should take out letters testamentary o nmy estate, I will and direct that the amount of the annuity heretofore given him, shall be credited to my estate, and deducted from the commissions to which he will be by law annually entitled; and if those annual commissions should not equal the amount of such annuity, it shall be taken and considered as full payment thereof.

Sixth. I desire to express still more emphatically than I have yet done my wish and direction that the library company shall never make any efforts to rival the other libraries of America or of Europe in the mere number of volumes they contain. If the amount of books in the Philadelphia Library is simply recorded in its catalogue, it will be sufficient for every useful purpose; and whatever its number may be, it need not be held in the gloom of discontent at its inferiority to others, nor in a prideful exultation at its excess above them. Let it rest in a modest contentment in the useful quality of its volumes for the benefit, not the amusement alone of the public, nor let it over an ambitious store of inferior printed paper, flap its flimsy leaves, and crow out the highest number of worthless books. Let it be a favor for the eminent works of fiction to be found upon its shelves; but let it not keep cushioned seats for time-wasting and lounging readers, nor places for every-day novels, mind-tainting reviews, controversial politics, scribblings of poetry and prose, biographies of unknown names, nor for those teachers of disjointed thinking, the daily newspapers, except, perhaps, for reference to support, since such an authority could never prove the authentic date of an event. In short, let the managers think only of the intrinsic value of additions to their shelves; for I hope (yet fearfully) that the streams flowing into the library will be clear, pure, and deep, diffusing healthy, truthful, and valuable information throughout the community, and not to be overborne by a common flood of cotemporary literature that may sweep off the firm foundations of knowledge, and leave no high places for a useful intellect to rest upon, to extend its bounties, and to be secure.

To assist in accomplishing the purposes of instruction above declared, let the contributors strive to elect to the management, if they can be found, at least one or two persons of *general knowledge*, men of more than common college and high-school education, with broad observation, reflection, and taste, and liberal thoughts, not sectarian to any of the professions, nor to the gains of trade and speculation, but those who have been called "men of good choice," and who may have wider views in government and selection than are commonly taken by the conventional and popular character of most public benficiaries; recollecting not only

there is safety in the multitude and agreement of counsel, but that wisdom, too, should there be found which will insure safety in giving the broadest intellect with its widest compass the opportunity to enlighten, to caution, and to extend the capacity of those whose occasions or means or disposition may have prevented their thinking it necessary to go beyond the self-satisfied character of a majority.

In witness whereof I have hereunto set my hand and seal, this eighteenth day of April, Anno Domini eighteen hundred and sixty-seven (1867).

[SEAL.] JAMES RUSH.

Signed, sealed, published, and declared by the above named Dr. James Rush, as and for a codicil to his last will and testament, in our presence, who, in his presence and in presence of each at his request, have hereunto set our hands as witnesses thereto.

J. G. FARMER, April 18, 1867.
R. S. HUNTER, April 18, 1867.

I, James Rush, do make this codicil to my last will and testament, for strong and sufficient reasons: I hereby absolutely revoke all legacies, annuties and bequests given in my will and testament, or in any codicil thereto, unto Benjamin Rush, son of my brother Richard Rush, and Robert and Julia Manners, children of my sister Mary Manners.

Witness my hand and seal this twelfth day of April, A. D. 1869.

JAMES RUSH.

In the Supreme Court of Pennsylvania in and for the Eastern District.

IN EQUITY.

To the Honorable the Judges of the said Court:

The Library Company of Philadelphia bring this their bill against Henry J. Williams, Esquire, and thereupon complain as follows:—

I. On the twenty-fifth day of March, A. D. 1742, John, Thomas and Richard Penn, proprietaries of Pennsylvania, by letters patent, reciting that Benjamin Franklin, and others therein named, had, "at a great expense, purchased a large and valuable collection of useful books, in order to erect a library for the advancement of knowledge and literature in the city of Philadelphia," created a body corporate by the name of "The Library Company of Philadelphia," by virtue of which said letters patent, and of certain supplemental acts of the Legislature, to all of which reference is craved if necessary, the complainant now exists as such body corporate.

II. In addition to the original foundation of the said corporation, it is the trustee, under the will of James Logan, of certain real estate, and of a collection of books known as the Loganian Library. This real estate and collection of books were, by indenture dated the 25th of March, 1760, conveyed by the executors of James Logan to William Allen and others, in trust, for certain purposes therein set forth. An addition to

the said collection of books was subsequently made by the will of William Logan; and, by an act of the Legislature, approved the 31st day of March, 1792, reciting that James Logan—the only surviving trustee of the said institution—had requested the Legislature that, pursuant to an agreement between himself and the directors of the Library Company of Philadelphia, the real estate and collection of books might be vested in the Library Company aforesaid: and, that power might be given to make such provisions as might most effectually tend to render the said institution beneficial to the public, consistently with the design of the founder, it was enacted that the said real estate and books should be vested in the Library Company of Philadelphia aforesaid, its successors and assigns, forever, in trust, for the support and increase of the said Loganian Library. This collection of books, of which the complainants are thus the trustee, now exceeds ten thousand volumes, and is one of the most valuable of the kind in the United States. Since the year 1793, the books have always been kept in the same building as those of the Library Company, and under the care of the same librarian. None of this collection are ever suffered to leave the building, and the same rule is, of course, observed as to rare books and manuscripts which belong to the Library Company proper.

Additions have also been made to the library by its association, in 1769, with the Union Library Company of Philadelphia, under an act of the Legislature approved on the 13th day of March of that year, to which reference is craved—in 1771, with the Associated Library Company and the Amicable Company—by a bequest, in the year 1804, by John Bleakley and the Rev. Samuel Preston—and by the bequest, in the year 1827, of the Mackenzie Library.

The number of books thus belonging to the complainants now exceeds ninety-five thousand volumes.

III. The corporation is composed of shareholders, and is maintained by their annual contributions, and from the income derived from such property as has been given to it, and from

fees paid for the use of the books from persons not shareholders.

All the profits and income of the corporation, after defraying the necessary expenses of maintenance, are applied to the purchase of books. The institution is managed by ten directors, annually chosen by the shareholders, who receive no compensation for their services, and the use of the books is given—

1. Without charge or compensation, to all persons using them within the library building;

2. To all shareholders, with certain usual limitations as to the number of volumes that may at any one time be taken for use without the building;

3. To all persons, for a small compensation, who wish to use the books without the building, and give security for their return.

IV. The original purpose for which the corporation was created was the collection and use of books by the shareholders at their homes, as a circulating library. It was the first of that character in this country, and has ever since preserved its character. The profits arising from subscriptions and other sources are devoted exclusively to the expenses of the library and to its increase, and are not employed for the use and benefit of the shareholders.

V. Your orators are advised and aver that they are, therefore, a corporation for charitable and literary uses, and are entitled to the aid of a court of chancery for preserving and protecting their rights.

VI. Although for many years the building of your orators, at the north-east corner of Fifth and Library streets, which was erected in the year 1793, was sufficient for the accommodation and preservation of the said libraries, yet it has ceased to be so;

and, in particular, the want of a fire-proof building, to be erected in a location more central, and therefore better adapted to the wants of the community, has received the serious attention of all persons interested in the library. To this end, subscriptions have, during the last ten years, been received from a number of persons, and the sums so received, together with the proceeds of a legacy of about fifty thousand dollars, specifically bequeathed for the same object, have been invested, and now form a fund amounting to about ninety thousand dollars, which, by the terms of the said subscription and of the said bequest, it is the duty of your orators, as trustees, to apply to this particular purpose.

VII. Among the shareholders of the Library Company aforesaid was Dr. James Rush, a native and resident of Philadelphia. He had been himself an author; he had taken an active interest in the affairs of the library, and was well acquainted with its objects and purposes, and, in particular, with the anxiety that its books and manuscripts should be safely lodged in an appropriate fire-proof building, to be erected in some central location, and of the fact that such subscriptions and legacy had been so made and received.

VIII. For the purpose of carrying out that end, he conceived the munificent design of providing such a building for the said libraries as would enable your orators both to preserve their collections and increase their usefulness to the community; or, to use the very words of his will, hereafter to be referred to, "to make provision for the preservation, extension, and free and convenient use of a public library, without any ambitious or pretentious display." With this purpose another was subsequently blended. The testator was without children, and had survived his wife. The latter had been one of the daughters of the late Jacob Ridgway, Esq., and had received, under his will, a large fortune, which she had left, by her will, unreservedly to her husband. The testator, therefore, desired, while providing for the future of the library, to acknowledge the source

whence the means so to do had been derived, and to perpetuate the memory of Mr. Ridgway.

IX. In the accomplishment of these ends, the testator made his will, and subsequently added three codicils. In the will itself, which was dated the twenty-sixth day of February, A. D. 1860, he devised all his estate, after the payment of certain legacies and annuities, to his brother-in-law, the defendant, (who had been for many years one of the directors of the library,) his heirs and assigns, "In trust, to select and purchase a lot of ground not less than one hundred and fifty feet square, situate between Fourth and Fifteenth and Spruce and Race streets, in the city of Philadelphia, and thereon to erect a fire-proof building sufficiently large to accommodate and contain all the books of the Library Company of Philadelphia, (whose library is now at the corner of Fifth and Library streets,) and to provide for its future extension according to plans, directions and specifications which I shall hereafter make or give; but if I should not make or leave any such plans, directions or specifications, then to erect the same according to his best judgment and to the views which I have expressed to him. It is my wish that this building should be exceedingly substantial, completely fire-proof, without any large, lofty, or merely ornamental halls or lecture-rooms; the whole interior to be divided in such a way as to contain the greatest number of books; to be well lighted, and so arranged as to be of easy and convenient access. And upon this further trust, as soon as this building is completed and ready for occupation, then in trust to convey the same, with the lot of ground whereon it is erected, unto the Library Company of Philadelphia aforesaid, and their successors, for the uses and purposes of their library, and for no other use or purpose whatever."

The will then contained a proviso, that, before such conveyance should be made, the Library Company should, either by an alteration in their charter, or by some other way satisfactory to his executor, bind themselves and their successors to comply with the following express conditions, and any others he might thereafter impose, under which they were to hold the said property and all the bequests and devises therein given to them:—

First.—That the Library Company should not permit any lectures or exhibitions of any kind, or formation of any museum, gallery or collection of statuary or paintings, which he, the said testator, deemed to be objects foreign to the legitimate purposes of a public library; and it was "only for the preservation, extension and free and convenient use of such a library, without any ambitious or pretentious display, that he desired to make provision."

Second.—That all accounts of the receipts and expenditures from his estate should be kept separate from other accounts of the said company, and be headed and kept as the accounts of "The Ridgway Branch of the Library Company of Philadelphia." And whenever the said building should have been completed and transferred to the said Library Company, and the preliminary conditions complied with, then the said testator did direct that his said executor should assign, transfer and convey all the residuary estate not expended in the purchase of the lot and construction of the building aforesaid, unto the Library Company, to be held and used by them and their successors for the following uses, trusts and purposes:—

1. To keep the real estate in good order and repair, and to make from time to time such additions to the library building as might be necessary for the extension, preservation, and convenient use of the said library and all additions thereto.

2. To set aside ten per cent. of the net income therefrom as a contingent fund, to be applied—

a. To build upon, improve, alter and renew any real estate thereby devised to the company.

b. To replace any loss from the failure of investments.

c. Whenever the contingent fund should amount to thirty thousand dollars, to apply the whole surplus beyond the thirty

thousand dollars for the general purposes to which the income of the residue was directed to be applied.

3. To pay the necessary salaries of the librarian and his assistants, and the expenses of binding the books of the whole library, making cheap catalogues, and all charges incident to its care and management.

4. After complying with the previous trusts, to apply the remainder or surplus of the income, or so much as might be necessary, to the increase and extension of the said library.

X. The first codicil was dated the sixteenth day of May, 1866. By it, the said testator added and imposed the following conditions as to the said bequest:—

1. In order to express his respect and regard for his father-in-law, Mr. Ridgway, and his affection and gratitude to his (Mr. Ridgway's) daughter, Mrs. Rush, by erecting to their memories a monument, he directed his executor to have a marble slab placed and maintained in one of the interior rooms of the new library, with an appropriate inscription.

2. He directed his executor to have inserted in the act of Assembly which might be necessary, clauses enacting—

a. That not more than one-fourth of the directors should belong to any of the three learned professions,—law, theology and medicine.

b. That the number of shares in the library should be limited to those actually issued at the time of the testator's death.

c. That the library should not connect themselves with any other body politic or corporate, as he wished them to be free from every inducement to go beyond what he considered to be the legitimate objects of a library company.

3. He added, that his reasons for choosing the Library Company for his residuary devisee were, because it had always been conducted quietly and unobtrusively, and steadily pursuing the appropriate objects for which such libraries were established.

4. Understanding that the managers of the company had never applied any of its funds to defray the expenses of the very simple refreshments of which they were accustomed to partake at the monthly meetings of the board, but had paid for them from their personal means, he approved of this course, which he feared was not very usual, and directed that in the future no part of the funds of the Ridgway Branch should ever be used and expended for that purpose.

5. He did not wish that any work should be excluded from the library on account of its difference from the ordinary or conventional opinions on the subjects of science, government, theology, morals or medicine.

6. He bequeathed all his pictures, private library, manuscripts, copyrights and papers, as also those of his father, Dr. Benjamin Rush, to the Library Company, to be safely kept in a room in the new building.

7. He directed that the building to be erected should have a basement story not less than a certain height.

8. If the Library Company should not accept the residuary estate on the terms and conditions contained in the will and codicils, or should fail to comply with any of the preliminary stipulations therein mentioned, then the testator devised the residue of his estate to his said executor, to found and endow a public library,—entirely distinct from and independent of the Philadelphia Library,—to be named and called "The Ridgway Library," under the said stipulations and conditions.

The said codicil then contained twenty other clauses, none of which concern the Library Company, (twelve of them being private specific bequests of legacies and annuities,) except the twenty-fourth, which provided that the remains of Mr. Ridgway, of Mrs. Rush and of himself should be removed to the new library building when completed, and placed in some spot within the outward limits of the same; and the twenty-fifth, which directed that if any of the specific devisees or annuitants named in that codicil should dispute any portion of his will, their bequests should be revoked, and the same paid over to the Library Company.

XI. Another codicil was added on the eighteenth of April, 1867, which contained the following provisions:—

1. As the testator did not desire that the Library Company should have a greater income than was required to provide for the legitimate increase of the library and their current expenses, (for which purpose the sums to be set apart to secure the legacies and annuities given by his said will and testament would, he thought, be sufficient,) he authorized and directed his executor to spend the whole remainder of his estate in the purchase of a lot for the erection of the library building, leaving the said company only the income sufficient to defray the ordinary and appropriate expenses of such an institution.

2. "I have," said the testator, "in my will limited the extent of the lot to be purchased for the library building, as well as its locality; but, as I desire that it shall have not only strength, durability and accommodation, but also be of sufficient magnitude for any future or contingent, but not an ambitious or competing, increase of the library,—in order to prevent, if possible, its being torn down in twenty years, and the lot sold at a speculative profit to suit the hyperbole of the times, I authorize and allow my executor, under a broad and thoughtful foresight, to increase the size of the lot, and select any situation he may deem most expedient, without regard to

any provision of my will or codicils. I know that an ostentatious library, to keep up with the progress of our country, collecting too many books, may be like an avaricious man who accumulates money to the ruin of both his modesty and his intellect. But I have a forlorn hope that the mind may yet be improved beyond a patronage, or even a toleration, of those crowds of graver or more puerile fictionists who mislead the idle, and of those garbling compilers who overlook or corrupt the truth of fuller and more useful works, by purloining from their pages in attempting to abbreviate and render them popular for their own advantage."

XII. Your orators are advised and charge, that, from the tenor of the said will, it is clear that the testator expected and designed that the building he directed his executor to put up would be used, if the Library Company were willing to accept the conditions imposed upon them, as a place of deposit of their own books, as well as those purchased with the funds provided by him.

They aver that there is nothing in the will of the testator tending to show a desire to interfere with, or trammel the corporation in the use of its books as a circulating library,—that is, lending them for use at the homes of the members,—or to confine either the present library, or the library bought with his funds, to being used within the building, or to encourage that mode of user.

They aver and charge that the discretion given to his executor to select the site of the intended building is in the nature of a trust for the benefit of your orators as a charitable corporation, and that the whole tenor of the will indicates that it was the intention of the testator to found a charity which should be beneficial to your orators as a library company having a collection of books, by affording or providing them a building for that purpose—that this general intent was clogged with no conditions saving such as have been already distinctly set forth, and that the power to select the site was merely incidental to the execution of that main purpose—that, on complying, or being ready to

comply with such regulations and conditions, your orators have the right to have the said powers exercised in aid of that general object and intention; and that, as it was incompetent for the testator, by verbal or unsigned directions, to revoke or vary the said gifts and trusts, so it was incompetent for him to change or affect the general intent of the will, or to qualify the powers thereby given to carry out that general purpose.

XIII. On the third day of June, 1869, notice of the probate of the said will and codicils was given by the defendant to your orators' board of directors, and on the same day, by a resolution of that board, it was "ordered that a special meeting of the Library Company be held on the 29th instant, at 12 o'clock, M., for the purpose of considering the propriety of accepting the devises and bequests contained in the will of the late Dr. James Rush, on the conditions therein expressed, and of applying for appropriate legislation to carry the same into effect."

XIV. On the 29th of June, at a special meeting of the shareholders held in pursuance of the said resolution of the directors, certain resolutions which were offered at the said meeting were referred to a committee consisting of six members and six directors, to report at an adjourned meeting of the shareholders.

XV. At an adjourned meeting held on the 5th of October, 1869, a majority of the said committee reported, among others, the following resolution:—

"*Resolved*, That the stockholders of the Library Company of Philadelphia do hereby accept the legacy of Dr. James Rush, according to the terms expressed in his will."

This resolution was, with the other, referred to a stock vote, to be taken on the 19th of October.

On that day, the vote having been taken, it was reported by the tellers that on the said resolution 298 votes had been cast in its favor and 293 against it. It was thereupon resolved that the further consideration of the bequest of Dr. Rush be postponed, and that a committee of five members and the directors

should be appointed to take the subject into consideration, and to recommend such action as they might deem expedient.

XVI. At an adjourned meeting of the shareholders held on the 25th of May, 1870, the committee appointed at the previous meeting reported that the following act of the Legislature had been passed and approved:—

"*Be it enacted, &c.*, That the Library Company of Philadelphia be, and they are, hereby authorized to act as trustees of the Ridgway branch of the Philadelphia Library, and the trusts pertaining thereto, under the last will and codicils of James Rush, late of the city of Philadelphia, doctor of medicine, upon the conditions and provisions therein contained, without limitation as to the yearly value or income of the said trust estate, but in such manner that the real and personal property of the company, including such books, pictures, statues, and other works of literature and art as now are, or hereafter shall be, held by them in their own right, or on any other of [or] different trusts, shall be in nowise affected thereby, but shall remain and be under their own entire and exclusive control and disposition; and the said company are hereby empowered, after acceptance of this act by the members of the said company, to apply from time to time to the Court of Common Pleas for the city and county of Philadelphia for such further amendments to the charter of the company as may be necessary to carry into effect the conditions and provisions of the said will and codicils in accordance with the directions of this act." Approved 23d February, 1870.

Whereupon the shareholders unanimously resolved to accept the provisions of the said act of Assembly, and requested the directors to apply for the following amendments of the charter of the company:—

1. "The Library Company of Philadelphia shall hereafter be held and taken to possess all such powers and capacities as may

be necessary to enable them to act as trustees under the will of the late Dr. James Rush, according to the provisions of an act of the General Assembly of the Commonwealth, approved on the 23d day of February, 1870, entitled 'An act relative to the Ridgway Branch of the Philadelphia Library.'

2. "So long as the Library Company shall act as such trustees, they shall do so under the following limitations and conditions:—

a. "Not more than one-fourth of the directors of the library shall belong to any one of the three learned professions of law, theology or medicine; but this shall not operate so as to exclude from re-election any of those who were members of the board at the time of the death of the said Dr. James Rush.

b. "The number of shares in the library shall be limited to those actually issued at the time of the death of Dr. Rush; but the managers, by their by-laws, shall have the authority to allow any respectable persons, depositing an amount, and paying an annual sum to be fixed by the board of managers, to have the full and free use of the library, as completely as if they were shareholders.

c. "The library shall not connect themselves with any other body, corporate or politic."

XVII. These amendments were subsequently, by decree of the Court of Common Pleas aforesaid, made part of the charter of the company.

XVIII. The said act of Assembly and the amendments of the said charter were necessary in order to enable the said company to effectually accept the provisions of the will and conditions attached by the testator to his gift, as your orators were advised that such acceptance and consequent modifications of the charter of the company could not be made by the mere vote of the shareholders.

XIX. Shortly after your orators had heard of the dispositions of the testator's will, they also learned that the defendant, his executor, had formed the intention to select, as the site of the building to be erected under the terms of the trust, a lot of ground at the south-east corner of Broad and Christian streets, in the city of Philadelphia, and, indeed, the fact was so stated by him at the meeting of the shareholders on the 29th of June, 1869.

XX. This site was, in the general opinion both of the directors and shareholders, an undesirable one for the purpose. It was especially undesirable as a site for a building which should contain the collection of books of the Library Company. It was believed by all to be very inconvenient for the purposes of the said company as established and used up to this time, and it was believed by much the larger number that such a site would be injurious, if not destructive, to the interests and future prospects of the company, as the remoteness of the location from the residences or places of resort of all the shareholders, or persons accustomed to make use of the books, would, practically, prevent the library being used for the purpose for which it had been founded and had always been maintained,—and hence the income derived from contributions of shareholders, without which the institution could not be supported or continued, would cease. And your orators expressly show to the court that the said proposed site is not less than half a mile south of the usual places of resort of nearly all their shareholders, and more than a mile out of the line of travel of the large majority using, or entitled to use the library.

XXI. As evidence of the general conviction of this, and of the ruinous consequences to the library, they aver that the very large number of votes, to wit, 293 votes, cast against any acceptance of the provisions of the devises and bequests of Dr. Rush—being only five less than the majority—was caused by a fear that the company would be obliged to remove their

collection to the site proposed by the defendant; and at the same meeting, of the 298 votes cast in favor of the acceptance of the gift, 256 votes were cast in favor of the following resolution:—

"*Resolved*, That so much of the present collection of books and other property of the company as may by the directors be deemed expedient, shall be retained in the present or some other central position for general use and circulation."

By which it would appear, that, out of 591 votes cast, 549 were, in effect, cast against the removal of the collection of the library to that site.

XXII. Your orators, therefore, deeply impressed with the great advantages that might be derived from a proper use of the discretion given by the testator to his executor,—the desirableness of having a proper building for the preservation and use of their library in a convenient location—the waste of money consequent on the erection of two buildings so remote from each other, for one common object—the still further waste in the maintenance of two distinct establishments therefor, and the apparent violation of the cardinal intent of the testator by so doing,—used all the influence they possessed to prevent such a selection of the site by the defendant.

XXIII. As soon, therefore, as they found themselves, by reason of their acceptance of the said bequest, and the allowance of the amendments to their charter necessary thereto, in a legal position to act under the trusts of the will, they put themselves in communication with the defendant, and, at a meeting of the board of directors held on the 10th of December, 1870, the following resolution was passed:—

"That the secretary be directed to inform Henry J. Williams, Esq., the executor of the will of Dr. Rush, of the amendments of the charter of the company, and to notify him that the company is now ready to undertake the performance of their duties as trustees of the Ridgway Branch of the Library."

And the following preamble and resolutions were also adopted:—

"WHEREAS, At a meeting of the members of the Library Company held on the 29th day of June, 1869, Mr. Williams, as executor of Dr. Rush, expressed an intention of erecting the library building contemplated by the provisions of the said will on the square of ground on the corner of Broad and Christian streets, in this city; now, further,

"*Resolved*, That it is the opinion of the directors of this company, that the removal of their collection of books to the site thus proposed would, under the circumstances, be destructive of the interests of the Library, and contrary to the wishes of a vast majority of the stockholders.

"*Resolved*, That the directors take this as the first opportunity since the company has been authorized by law to accept the trusts of Dr. Rush's will, to express to Mr. Williams their earnest hope and request that he will reconsider his intention of building on the site named.

"*Resolved*, That Dr. Willing, Judge Hare and Mr. Lea be appointed a committee to communicate these resolutions to Mr. Williams, and to confer with him on the subject."

XXIV. At and before this time, your orators had learned that the defendant, in making the selection of the said site at Broad and Christian streets, was not acting either under the directions of the testator as contained in his will, nor in the proper and legal exercise of the discretion which the will had given to him, but that before and at the time when the said will was admitted to probate, he had disqualified and disabled himself from exercising any discretion whatever in the premises.

XXV. The mode or circumstance by which he had thus disabled himself was this, viz.: he had bound himself, by a most solemn verbal promise, made to the testator in the extremity of his last illness, and within a month of his death, not to exercise any discretion at all, but to use a particular piece of ground, and no other, as the site of said building.

XXVI. As evidence of this, your orators show to the court the following facts:—They have already referred to a special meeting of their shareholders, which was held on the 29th of June, 1869. At that meeting the defendant was present, and he then verbally mentioned his determination to place the said library on the Broad street lot. After the meeting, being strongly urged by the committee to change that site for another equally good, and in a more central location, he, in order to relieve himself from the pressure thus put upon him, assigned, among other reasons for his determination, that a loss to the estate would ensue if the lot was not used for that purpose. In answer to this, it was at once arranged that any such loss would be met by voluntary contributions in relief of the estate; whereupon the defendant declined the proposition, and announced his final determination to place the building upon that lot, under all circumstances and regardless of all consequences, unless prevented by a court of competent jurisdiction.

XXVII. As further and conclusive evidence in this behalf, your orators show that, in answer to a letter from Dr. Willing, the chairman of the said committee appointed on the 10th of December, 1870, the following communication was received from the defendant:—

CHESTNUT HILL, Dec. 30th, 1870.

MY DEAR DOCTOR:—I did not intend my note of the 17th instant to be a formal reply to the resolutions of the directors of the Library Company, nor to prevent the committee from having the conference they requested. So far from it, that I mentioned both time and place at which I would have been happy to meet them. I cannot, however, conceal my conviction, that nothing they would say would change my intention of placing the Ridgway branch of the Philadelphia Library on the lot purchased by Dr. Rush for its site; and, after all that has taken place, I must confess I am a little surprised that they should again ask me to do so. Judge Hare and yourself must both be fully aware (for I have stated them, I believe,

both orally and in writing) of the circumstances connected with the selection of that lot for this purpose; but, as Mr. Lea, one of your committee, is a new member, I shall repeat them, even at the risk of being unnecessarily tedious in my answer; for I cannot believe the directors could expect *me* to make the change they desire, if they fully appreciated my position.

Some weeks before Dr. Rush's death he was very anxious to have the location of the intended building finally fixed and settled; and he desired me to ascertain the size and cost of all the vacant lots on Broad street, on which street he desired it to be placed. I procured statements of the sizes and prices of all I thought at all suitable, from Vine to South street, but he was satisfied with none of them. Another gentleman brought him a plan of the lot on Christian street, and he was so much pleased with it that he directed me to buy it at once. I did so; and when the contract was signed and a part of the consideration paid, he expressed great pleasure that it was concluded, as it relieved his mind from all anxiety. Some days after, he recurred again to this subject, as it had probably occurred to him that he had given me an absolute discretion as to the situation of the library by the terms of his will, and that I might be induced to overrule his decision after he was gone. He called me to his bedside and asked me to give him a promise that I would *build the library on that lot, and nowhere else.* I gave him this promise as fully and solemnly as language could express it, and he then thanked me and said he could now die in peace. Now, do you think it would be at all consistent with truth and honesty for me voluntarily to violate a pledge given under circumstances which render it as sacred as an oath, and made to a dying man who had confided to me the management of his whole estate? Would you, with your well-known delicacy and sensibility to all honorable engagements, feel yourself justified in doing so, were the case your own, and should I not lose your respect and regard (which I value very highly) were I to hesitate for a moment as to what was my duty?

And what is the reason assigned why I should do this?—"to gratify the wishes of the shareholders." But have these share-

holders shown such an appreciation of the magnificent gift of Dr. Rush (which is only subject to their future acceptance) as to render his representative very desirous to comply with their wishes, in opposition to the repeatedly and earnestly declared intentions of Dr. Rush, and to his own deliberate judgment? When the question was first presented to them, these shareholders, by a majority of five, accepted his bequest, but, by a very much larger majority, refused to pass a resolution expressing their gratitude for his gift. True, at a subsequent meeting they adopted such a resolution, but it was only on second thoughts; and it may be doubted whether it was not agreed to because of the extraordinary position in which they would be placed, if they were to take his money and refuse to admit they were obliged to him.

I have said that to assent to the wishes of the shareholders would be in opposition to my own deliberate judgment, and I mean this in its fullest extent. I think that, considering its size, its price, and the description of library Dr. Rush intended to endow, there is not an attainable position on Broad street, of sufficient size to meet his views, which is preferable to the one he has himself selected.

Now, the Library Company give me notice that the company "are now ready to undertake the performance of their duties as trustees for the Ridgway branch of the Library,"—*duties* and *trusts* which I understand commence only when the building is finished; but I am not aware that they have shown, in any one instance, a disposition to comply with the last instructions of one whom I shall always consider as their munificent benefactor.

* * * * * * *

Very truly yours,

H. J. WILLIAMS.

Dr. Ch. Willing, Chairman.

XXVIII. While your orators are ready to appreciate the high moral conviction which the defendant feels, of his duty to abide by the promise thus made by him to his testator, and to

fulfill the same, yet they are advised that it cannot be thus fulfilled to the prejudice of your orators, for the following reasons:—

They are advised, and they so submit to the court, that all discretionary powers given to trustees are themselves trusts, and that in the exercise thereof the trustee is bound to use the same for the furtherance of the purpose for which they were given, and not otherwise; that, in the exercise of discretionary powers, the donee thereof cannot and must not act under the influence of motives other than such as should of right direct him in dealing with property not his own, and entrusted to him for a special purpose, and that if he be disabled from using his natural, unbiased discretion or judgment in the exercise of the power, from any cause which binds or warps, or has a manifest tendency to warp the same, a court of equity will interfere to restrain such abuse of the trust, and to direct what should be done by such trustee according to a sound and unbiased discretion.

And they are further advised that the discretionary power given to the defendant by the will and codicils of the testator was in the nature of property of your orators, inasmuch as its exercise will vary and modify their rights, and will certainly, if exercised according to the defendant's expressed intention, destroy or greatly impair the usefulness of the literary charity to be administered by them—that the verbal directions of the testator, varying the nature of the trust and confidence reposed by him in the defendant, and the rights which your orators, as devisees, had in the beneficial enjoyment of the exercise of that power, were as absolutely null and void as those of a stranger,—first, by reason of being made within one calendar month prior to the death of the testator, and, therefore, void under the statute in such case provided—and, secondly, by reason of their not being in writing and signed by the testator at the end thereof, in accordance with the statute relating to wills.

And they are further advised that, under the circumstances of this case,—while it is true that a court of equity will not

interfere with a trustee in the exercise of a discretionary power, (save to see that a discretion is really exercised,) yet, that looking to the fact that the object of this testator was to found a charity of this particular sort—a literary charity—by furnishing it with books and maintaining said building, and that it was certainly designed that your orators should administer that charity in connection with their own, and under one management, and, it was probably intended, in one building, and with one corps of servants and assistants,—a court of equity, having control of charities, would, even if the donee had not so surrendered and bound his discretion before the trust had vested in him, interfere to prevent its improper exercise.

XXIX. Your orators aver that nothing but the high moral conviction under which the defendant labors—of his duty to abide by his promise—blinds him to these consequences. And although true it is that the promise so made by him to his testator was wholly illegal and could not lawfully bind the former nor be enforced against him, yet your orators charge that the defendant did and does believe that his conscience was and is bound thereby, and that he would be doing a dishonorable act if he made any other selection.

XXX. But the defendant at times insists that he has selected the said site in the exercise of *his own* discretion, unbiased by said promise; but your orators charge that the defendant, having made the promise and believing himself bound by it, was and is utterly unable to determine what line of conduct he would have followed if he had not made such promise, and that a court of equity will not regard any assertion of what might or would have been the defendant's determination, had no such influence existed.

XXXI. At other times the defendant alleges, as an excuse, that, as the testator agreed to buy the said lot for the purpose of having a library building erected thereon, he, the testator, did thus *himself* select the site for the building; and that he, the

defendant, as trustee, had not the less a right to select voluntarily the *same* lot which the testator had thus selected, or else that the testator's alleged selection, in some way or other, took the place of that to be made by the defendant, and was either binding, or could, at his option, be made binding, and, in fact and law, has been made binding, on all claiming under the will; the contrary whereof your orators charge to be true, and they aver that, by his own showing, it was not possible for the defendant, after the testator's death, to make a voluntary selection of that or any other site, because he had already, in the testator's lifetime, bound himself by his promise not to exercise the discretion which the will had given him, but to build the library on that site, and nowhere else.

XXXII. Your orators further charge that to permit such an alteration of the testator's will to be made by parol, would be a mere evasion of the statute of wills—that such attempted alteration cannot be strengthened by the mere purchase by the testator of a lot of ground, unaccompanied by a written declaration, signed by him, of the purpose for which it was so bought—and especially when, by the law of the land, such an alteration of the will, even if otherwise made in the most lawful and binding manner, would be wholly void and of no effect, by reason as aforesaid of having been made within one calendar month prior to the testator's death.

Wherefore, every act and declaration both of the testator and of the defendant in reference to the determination or selection of the said lot at the south-east corner of Broad and Christian streets, as a site for the building to be erected under the trusts in the will contained, is wholly nugatory, void, and ineffectual for that purpose.

XXXIII. And they charge that the site selected is utterly ruinous and destructive of the general purpose for which your orators were incorporated and endowed, and the trust which they have been hitherto administering, and which it was the manifest design of the testator to promote, in this,—

that it compels an election not authorized by the will, on the part of your orators, either to place their collection of books where it will be utterly or comparatively useless to their shareholders, or else lose the benefit of the intended gift of the testator to them of a building to contain their books and property; and that it is apparent, from the facts already set forth, that the proposed selection of the site by the trustee—even if it were made under an unbiased discretion—is so evidently disadvantageous to the object proposed by the testator, so injurious to his intended beneficiaries, and so contrary to their wishes, that this court will interfere and control the defendant in regard to the selection of the site, or see that a place is selected which will not be injurious to the objects for which the power was conferred. And your orators charge that the vote of the stockholders accepting the said act of Assembly, and authorizing the amendments to be obtained to their charter, was a distinct election on their part not to allow their collection of books to be removed to the building to be erected by the defendant, if placed on the proposed site on Broad street.

XXXIV. Your orators further show that the selection of the said site will not only be destructive of their own interests as aforesaid, but will also frustrate the main intent of the testator.

The tenor of the will contemplates that the library shall not be free, and that its income shall be derived from the use of the books of your orators, at least for some years to come, nor is any other fund provided by the testator for the purchase of books.

By the second codicil of the said will, the testator provided as follows:—

"*First.*—I have given and devised the greater part of my estate to my executor for the purpose of erecting for the Library Company of Philadelphia a building not only large enough to contain their present books, but also their probable increase for many years to come. Now, as I do not desire that the Library Company shall have an income greater than is required to provide for the legitimate (not a competing) increase

of the library and their current expenses—not to be so large as to invite extravagance and waste),—for which purposes the sums to be set apart to secure the legacies and annuities given by my said will and testament will be sufficient,—I hereby authorize and direct my said executor to expend the whole remainder of my estate in the purchase of a lot and the erection of the library building, construction of book-cases, &c., leaving the said company only an income sufficient to defray the ordinary and strictly appropriate expenses of such an institution."

According to a literal construction of this clause, the testator permits no part of his estate to be employed in the maintenance of the library, or in the purchase of books, except the income of the fund to be set apart in the first instance for the payment of the annuities when and as these annuities shall fall in. He judged that the funds of your orators would be sufficient in the meantime, but they aver that this will not be the case if two separate buildings and establishments are to be kept up. They charge that the aggregate amount of annuities and legacies given by the said will and codicils will require to be set apart a fund of about $200,000; leaving for the ultimate support of the Ridgway branch, if sustained as a distinct institution, only about $11,000 a year, which would scarcely pay the taxes and current expenses.

If, however, by a liberal construction of the said clause of the codicil, the testator intended that his executor should not only erect the proposed building, but should set apart a fund to be held by your orators for the payment of taxes and current expenses for repairs and maintenance, for salaries of officers, and the publication of the testator's works, as prescribed by his will, (for which not less than $200,000 would be necessary,) then your orators charge that the character of the building which the defendant proposes to erect is such as to defeat that intention entirely. For they aver that the defendant, acting on conversations held with the testator in his last illness, and drafts and sketches left by him,—which the defendant alleges are binding on him, but which your orators charge are not so in point of law,—has, without consultation with your orators' directors,

determined on a plan of building to be so erected, the cost of which, and the equipment thereof as proposed by him, cannot, as your orators aver, be less than $700,000. The inventory of the testator's estate, as filed by the defendant for the purposes of the collateral inheritance tax, amounts, in the aggregate, to $1,110,717

From this must be deducted:—

Collateral inheritance tax, . . .	$50,369	
Commissions, expenses, &c., . . .	40,833	
Cost of the lot at Broad and Christian sts.,	130,000	
Annuity fund, ...	200,000	
		421,202
Leaving for the building and its equipments,		$689,515

which is less than will be necessary for the erection of the building and its equipment as the defendant proposes to erect it.

On the other hand, your orators aver that their net income is as follows:—

From investments, rents, &c., . . .	$3,804 94	
Annual subscriptions, ...	4,981 39	
Miscellaneous, ...	58 14	
		$8,844 47
Deduct salaries and current expenses, .		4,193 01
Leaving for books and contingencies, .		$4,651 46

In the above statement no allowance is made for yearly taxes, the library building being for the present exempt by law.

XXXV. If the two collections can be placed in one building, and that on a site which, by its convenience of access, will compare with the other libraries of the city, the superior inducements it would offer would, by increasing the number of persons resorting to it, increase the income, and thus afford a large revenue for the increase of the collection, now manifestly inadequate to the wants of such a community as this. But if the collections are to be separated, the income of

your orators from all sources will be entirely inadequate for their maintenance and ordinary expenses, and no further purchase of books will be possible until, by the death of the annuitants, the annuity fund should come into possession, which may not be for many years. And as the income is mainly derived from subscriptions, the result may be, that a great number of the shareholders will, under such circumstances, refuse to pay the same, and allow their shares to become forfeited, which will still further diminish your orators' resources. If, therefore, the defendant should proceed in the erection of the building as proposed by him, your orators charge that the cardinal intention of the testator, as set forth in his will and codicils, will be defeated.

XXXVI. Your orators are advised that being the trustees to execute this charity when the building is completed, they are bound to consider the consequences of the proposed and threatened action of the defendant, and that it is their duty to apply for relief to this court, having jurisdiction over charities and trusts.

XXXVII. Wherefore they pray equitable relief as follows:—

I. That the rights of your orators and of the defendant in the premises may be ascertained and declared.

II. That it may be declared and decreed that the power conferred on the defendant by the will of the testator was a trust to be administered by him only in the manner in which all trusts can or of right ought to be administered.

III. That the defendant may discover the present condition of the estate of the said testator, and what plans and specifications, if any, he has procured for the erection of the proposed building at the corner of Broad and Christian streets, and what will be the probable cost of such building.

IV. That the Court may decree and declare that the defend-

ant, being, at and before the time when the said trust vested in him, or supposing himself to be, under an obligation which bound his discretion as to the selection of a site for the said building, was and is thereby disqualified from and incapable of exercising the power and trust in that behalf given to him by the said will, and that the same may be exercised by this Court having jurisdiction in the premises.

V. That it be referred to a Master, to inquire and report what would be a proper and fit location for the said building, to the end that the true intent and purpose of the testator, as contained in his will, may be carried into full effect.

VI. That the Court may from time to time give such further instructions, and make such further orders and decrees in the administration of the trust, as to them shall seem fit; and especially that it may declare how much of the *corpus* of the estate shall or ought to be expended and employed in the purchase of a convenient lot of ground and the erection of a suitable building thereon.

VII. That the defendant may be restrained by injunction, preliminary until the hearing and perpetual thereafter, from proceeding to erect the said building on the said lot situate on the south-east corner of Broad and Christian streets.

VIII. General relief.

WM. HENRY RAWLE,
R. C. McMURTRIE,
WM. M. MEREDITH,
For Complainants.

inches
centimeters
D50 Illuminant, 2 degree observer
Density
Golden Thread
Colors by Munsell Color Services Lab
Dee Williams

No. 1. *July Term, 187*

IN THE SUPREME COURT FOR THE EASTE DISTRICT OF PENNSYLVANIA.

IN EQUITY.

THE LIBRARY COMPANY OF PHILADELP

vs.

HENRY J. WILLIAMS, ESQUIRE

BILL.

FILED APRIL 11th, 1871.

To the within-named Defendant, Henry J. Williams:

You are hereby notified and required, fourteen days after service hereof on you, ex of the day of such service, to cause an appe to be entered for you in the Supreme Cou the Eastern District of Pennsylvania, within Bill of Complaint of the within- complainant, and to observe what the said shall direct.

Witness our hands at Philadelphia, this 11t of April, one thousand eight hundred and se one.

WM. HENRY RAWL
R. C. McMURTRIE,
WM. M. MEREDITH

NOTE.—If you fail to comply with the directions, by entering an appearance in the thonotary's office within fourteen days, you w liable to have the bill taken *pro confesso*, decree made against you in your absence.

SUPREME COURT.

IN EQUITY.

JULY TERM, 1871. No. 1.

THE LIBRARY COMPANY OF PHILADELPHIA

vs.

HENRY J. WILLIAMS.

The Answer of Henry J. Williams, Executor of the Last Will and Testament of James Rush, M.D., to the Bill of Complaint of The Library Company of Philadelphia.

1. James Rush, M.D., of the city of Philadelphia, died on the 26th day of May, 1869, leaving a last Will and Codicils from which extracts have been made in the bill filed. A copy marked "A," hereto annexed, it is prayed, may be taken as a part of this, my answer.

He died seized and possessed of valuable real and personal property, inventoried and appraised, as charged in the bill, at $1,110,717.

He devised and bequeathed his whole estate to me, his executor (Will, p. 3), in trust, after payment during the respective lives of the beneficiaries, of annuities amounting to about $8100, to expend the residue in the purchase of a "lot of ground not less than one hundred and fifty feet square, situate between Fourth and Fifteenth, and Spruce and Race Streets in the city of Philadelphia" (Will, p. 4), and in the erection thereon "of a fire-proof building sufficiently large to "accommodate and contain all the books of the Library Com- "pany of Philadelphia, and to provide for its future extension "according to plans, directions and specifications which I shall "hereafter make or give; but if I should not make or leave

"any such plans, directions or specifications, then to erect "the same according to his best judgment, and to the views "which I have expressed to him." One of his objects in thus giving his residuary estate was, as he said:—

"To express my respect and regard for my father-in-law, "the late Jacob Ridgway, and my affection for, and gratitude "to his daughter, Phœbe Ann Rush, by erecting to their mem- "ories a monument which I hope will prove more durable "than any other grateful record I could make." (Will, p. 11.)

By a codicil he provided for the purchase of a larger lot, and an indefinite extension of the area for selection:—

"I authorize and allow my executor, under a broad and "thoughtful foresight, to increase the size of the lot and select "any situation he may deem most expedient, without regard "to any provision of my will or codicils." (Will, p. 26.)

Though in the *first* codicil to his will he had said: "I "wish (Will, p. 15) that the greater part of my estate may "be spent in completing the new library building. The an- "nuities as they expire and fall into my residuary estate will "be amply sufficient for all the legitimate purposes of a library," yet he was so desirous that the Library Company should not be put into the possession of "an income greater than is required "to provide for the legitimate (not a competing) increase "of the library and their current expenses (not to be so "large as to invite extravagance and waste), for which pur- "poses the sum to be set apart to secure the legacies and "annuities given by my said will and testament will be suffi- "cient" (Will, p. 23–24), that for the third time, in the second codicil, after announcing those views and reciting that he had theretofore given and devised the greater portion of his estate to his executor "for the purpose of erecting for the "Library Company of Philadelphia a building not only large "enough to contain their present books, but also their proba- "ble increase for many years to come" (Will, p. 24); he further provided as follows:—

"I hereby authorize and direct my said executor to expend "*the whole* remainder of my estate in the purchase of a lot and "the erection of the library building, construction of book-

"cases, &c., leaving the said company only an income sufficient to defray the ordinary and strictly appropriate expenses "of such an institution." (Will, p. 24.)

He directed that "so soon as this building was completed "and ready for occupation," I, his executor (Will, p. 5), should convey it, with the lot of ground whereon it was erected, unto "The Library Company, of Philadelphia," for the uses and purposes of their library, and for no other use and purpose whatever. Provided, however, that before any such conveyance should be made to the said Library Company they should, either by an alteration in their charter, or in some other way satisfactory to his executor, bind themselves to conform to and comply with certain express conditions in the Will and Codicils enumerated, viz:—

In the Will:—

A. Lectures, &c., must not be delivered, nor any museum, gallery, &c., formed within the building. (Will, p. 5.)

B. The keeping of a separate account of the receipts and expenditures of the "Ridgway Branch." (Will, p. 6.)

In the Codicil:—

A. The maintaining, in one of the interior rooms, a marble slab, with a certain inscription, as a testimonial to his wife and her father, which slab is to be placed there by myself. (Codicil, p. 11.)

B. An insertion in an act of Assembly which will be required, as he said, to carry out the provisions of his Will and Codicils, clauses imposing (Codicil, p. 11)—

a. A limitation as to the number of members of the board to be taken from the learned professions.

b. A bar upon the further issue of shares of stock. (Codicil, p. 12.)

c. A bar upon any connection with any other corporation. (Codicil, p. 12.)

C. Refreshments not to be paid for out of the funds received from him. (Codicil, p. 12.)

D. No work to be excluded from the Library on account of its difference from the ordinary or conventional opinions, &c. (Codicil, p. 13.)

E. The safe keeping of his pictures, library, &c., in one of the rooms of the new building. (Codicil, p. 14.)

He also directed, that after this building had been finished, and all the preliminary conditions complied with, the residue of his estate should be conveyed to the said Company upon he trusts in his Will and Codicils set out. (Will, p. 6.)

He further provided:—

"If the Philadelphia Library Company should omit or de-
"cline to accept my residuary estate on the terms and condi-
"tions in my Will and Codicils contained, or fail to comply
"with any of the preliminary stipulations and directions
"therein mentioned, then I give and devise the whole residue
"of my estate, real and personal, whatsoever and wheresoever
"the same may be, after paying and securing all legacies, &c.,
"* * * unto Henry J. Williams, my executor, in my said
"last Will named, his heirs, executors, and administrators, in
"trust, therewith to found and endow a public library entirely
"distinct from, and independent of, the Philadelphia Library
"Company, to be named and called the Ridgway Library."
(Codicil, p. 14–15.)

This Will was proved on the 31st May, 1869, on which day I took an oath to perform my duties as executor in accordance with law. I have, from the outset, acted under advice of counsel. Until his appointment to the Bench of the Supreme Court of the United States, the Hon. William Strong was one of my legal advisers. I have never, since assuming the executorship, in act or thought, done anything contrary to what I believed to be my legal duty, as such executor, and I have taken no important step without first obtaining the advice and approbation of my counsel.

The testator knew that the Library Company had, for very many years, been striving to secure funds sufficient to erect a fire-proof building large enough to contain all their books, and their probable increase, and his provision that such a building should be erected in accordance with his views, was, with him, a favorite and constant matter of thought.

He made many inquiries for eligible lots and as to proper places for building. He ascertained that the lot which, in 1860, he had thought sufficient would be too small, and that there would be a great difficulty if not an impossibility in obtaining with the funds he could leave, within the area first designated, such a one as would be required, and therefore, in 1867, removed all restriction as to limits. He was very anxious to have the matter of site determined before his death, and desired me and others to ascertain the size and cost of vacant lots on Broad Street, on which street he particularly desired the building to be placed. I procured descriptions and prices of all I considered suitable, between Vine and South Streets, but he was satisfied with none of them. Another gentleman brought him a plan of the lot at Broad and Christian Streets, and he was so much pleased with it, that he instructed me to buy it, and I did so. The contract was signed on the eighteenth day of May, 1869, and the title papers were directed to be sent immediately to Mr. Henry Wharton for his opinion thereon. A few days after this, the Testator inquired whether I thought the Library Company would make any objection to the site, and I answered that from what I knew of the board, I believed they would not. He asked me to ascertain to a certainty their feelings on this subject, but not being willing that his testamentary intentions should be generally known, he only authorized me to communicate them to two of the managers, viz: Mr. Henry Wharton and Colonel Alexander Biddle, whose opinions I was requested to ask. I desired Colonel Biddle to accompany me to Mr. Wharton's office, and then stated to them that Dr. Rush had given almost his whole fortune, amounting to a million of dollars, to build a library at Broad and Christian Streets, and asked them if they thought the Library Company would object to that location. They declared that, considering the magnificence of the gift, the Library Company ought not, and they believed would not, make any objection to his wishes as to its position. Dr. Rush, to whom I immediately returned, was informed of the result of the interview—was greatly pleased, and having obtained the views of three members of the board, appeared entirely satisfied. Had he known that his wishes, thus

approved, would have been disregarded when he was gone, he would most unquestionably have embodied them in a form *legally* binding. It was after this, that the promise stated in my letter of thirtieth December, 1870, was made to him. This was given with a knowledge of almost every circumstance which led subsequently to my decision, when, as his executor, it became my duty to determine the site of the library. Knowing, as I do, that this promise is not binding upon *me*, the trustee in law, however it may be in morals and good faith upon the beneficiaries, I aver that I have never heard any reason assigned which would justify me in changing my opinion as to the propriety of this site. I have certainly seen none assigned in the bill which has been filed.

If there had been a conflict between my sworn duty under my oath as executor, and my promise to the testator, I could have ended it by a resignation of my executorship; but as no such conflict ever arose, it has never become necessary for me to determine what course, under such circumstances, it would be right for me to pursue.

I selected the Broad and Christian Street lot when I had assumed the executorship, after calm, careful, and deliberate consideration—having thought of it in every shape, favorable and unfavorable, in which it had been presented—because it was, in my judgment, the best I could obtain for the objects and purposes of Dr. Rush's will—and because it combined adequate dimensions with cheapness and position. I announced my selection at the meeting of shareholders of the Library Company on the twenty-ninth of June, 1869, and at the meeting held on the fifth of October, 1869, the resolutions, alleged to have been resolutions of acceptance, were adopted in face of the bitter opposition of a then minority (now in some mysterious way controlling the company) hostile to the selected site.

I was advised by my counsel in writing on the 9th of July, 1869:—

"As executor you are guided by the written will. In the exercise of the discretion reposed in you by that instrument,

you may regard Dr. Rush's views and wishes orally expressed, but, after all, *your* judgment, however it may be made up, must be your guide in matters left to your discretion."

In pursuance of this advice—for I have felt, and still feel, under the obligation of my oath of office, bound to perform my duty in accordance with the *law*—I considered, in all its bearings, without any bias, the matter of the site, but my conviction that it was the one by far the most expedient remained, and still remains, unchanged.

Though protesting that the complainants have no concern with or control over my reasons for this decision so long as they are honest, which is not, I believe, denied, yet, in deference to the Court, I will state some of those which influenced me at the outset, and govern me still.

The lot I have selected is bounded by Broad and Thirteenth, Christian and Carpenter Streets. It has a front on Broad Street of 299 feet 5 inches; a depth along Carpenter and Christian Streets of 527 feet, and contains about 3½ acres. It cost about $132,000. It was Dr. Rush's desire that I should erect a building upon a general plan which he described to me. It was to be of the Greek Doric order—to consist of a centre building with two wings—the former to have eight, and each of the latter four, columns in front. The details were left entirely to me. This plan, the architect, Mr. A. Hutton, tells me, will require, according to the drafts prepared by him and approved by me, a front of at least 220 feet. All efforts in other libraries to give sufficient light from the roof alone having signally failed, as I have learned from personal examination and correspondence, an additional space of 50 or 60 feet will be required to give side lights, so that a lot of from 260 to 275 feet is absolutely necessary, in my judgment, for the building I am required to construct.

The testator's "cardinal intent" was, that a building should be erected by me sufficiently large to accommodate for all time the books of the Philadelphia Library, such as would be an ornament to the city, and a lasting monument to his wife and her father. Broad Street, in my opinion, is infinitely preferable

as a site for such a building, because of the handsome private and public structures already upon it, and of the probability of many more being erected there in the future; because of its length and centrality, and of its great width, which furnishes an opportunity for architectural display that our narrow streets fail to afford. In this preference my testator shared. A location of the library upon any other street in the city would be decidedly against my judgment.

From Vine to South Street it is almost entirely improved with buildings too costly to be paid for and then torn down. A prominent real estate agent whom I requested to obtain the prices of lots on this street, has furnished me a list of all the unimproved properties of any magnitude which he ascertained to be for sale, and the prices asked. By this it appears, that lots north of Vine Street from 150 to 200 feet in depth are held at about $500 per foot, those between Race and Arch from 180 to 260 feet in depth at from $900 to $1000 per foot, and those south of Locust Street of a depth of 130 feet at about $750 per foot; that the Asylum for the Deaf and Dumb at Pine Street, recommended as admirably suited for the library by some hostile to the site selected by me, which is but little more than one-third of a mile below, with a depth less by 130 feet than the latter, and a front of but 200 feet, is held at $275,000. All these lots, with the exception of the last, are quite narrow.

I am informed that the lot owned by the Pennsylvania Railroad, having a front on Market Street of about 250 feet, and a depth on Thirteenth and Juniper Streets of about 353 feet, is held at from $300,000 to $350,000, and that for lots on Broad Street north of the Monument Cemetery with a depth of about 330 feet, $425 per foot have been offered and refused.

The lot on Locust Street, recently purchased by the complainants, containing one-sixth the area of the selected lot, cost, as I am informed and believe, $67,000.

I hope, under the estimates which have been furnished me, to finish the building with all its equipments, for $650,000; but I will not depend upon a smaller expenditure than $700,000. Though not admitting their correctness, saving for the purpose of the argument, I will accept the figures given by the

complainants in the 25th page of their bill, by which it will appear, that if I expend, as I would be compelled, an additional amount of $140,000 in the purchase of a different site, I would have but $550,000 left, and if required to set apart for their use, as they seem to demand, an additional sum of $200,000, I could erect no fitting monument to the testator's wife and her father, and no building in accordance with my views or those which Dr. Rush has expressed to me. Neither the Company nor the Court can interfere with me in the selection of a site without cramping me in the matter of the building, over which I have a control that I believe has not been questioned.

The site which I have selected is within easy reach of all parts of the city. South of it is an immense population which is annually increasing, and, in the opinion of many—an opinion in which I join—this portion of Broad Street will ultimately be filled with magnificent residences. The facilities afforded by passenger railways are such, that to those north of it who may wish to use the library, a ride of a few squares additional will make no difference in cost and but little in time. The cars of the Tenth and Eleventh Streets line run within two squares, those of the Twelfth Street within one square, and those of the Thirteenth and Fifteenth Streets and Union lines along or around the lot. The latter also carry passengers without extra charge to the Navy Yard, Twenty-third Street, Fairmount, Richmond, and Kensington. It is equidistant with Buttonwood Street—in all less than four-fifths of a mile—from the street which is the very centre of the city, Chestnut Street, and below which a very large number of stockholders reside. It is nearer to Broad and Walnut Streets than is the present library building. It is but 930 yards south of the lot on Locust Street which complainants have recently bought, and distant from it, by car, five minutes, and by rapid walking six minutes. The city through which the 900 stockholders are scattered is sixty miles in circumference.

The great size of this lot will always protect the library from the noise and bustle of the more crowded portions of the city, and from all danger from fires or nuisances in its neighborhood.

Many of the libraries and museums of Europe are further

removed than it is from the residences of those who use them. In this country, wherever the plan of building in the centre of population has been followed, it has been found in a few years, from its shifting so frequently, that they have become so disadvantageously located as to make removal a matter of constantly recurring agitation. The Astor Library in New York, a comparatively modern institution, is now many miles distant from the mass of the reading public, and the Boston Public Library has been compelled to establish a branch quite distant from the original location, from which an entire removal is proposed.

I have chosen this site for these, among other reasons:—

1. It is on the finest street of our city.

2. It is, so far as I know, the only lot on that street sufficiently large for the building I must erect, which I can obtain at a reasonable cost.

3. If compelled to purchase a lot elsewhere, I will not be able to erect the building ordered by the testator.

4. I know of no suitable lot on any other street which can be had at the same cost.

5. It is but little distant from the centre of the city, and is within easy reach, by car, of all portions of it.

6. It will not be necessary to have the library building torn down in twenty years and the lot sold because of its limited dimensions (Codicil, p. 25).

7. Its size insures, for all time light, air, retirement, quiet, and safety from external dangers.

8. It already belongs to the estate.

9. It is exactly suited for the kind of library Dr. Rush proposed to endow—not a reading-room, nor one containing the light and ephemeral literature of the day, but one for readers and students of a higher grade.

10. It will carry out the cardinal intent of the testator as *he* understood it, because it is the one he selected himself.

I adhere to this choice and to my determination to build thereon notwithstanding the opposition which has been raised, because it was to my judgment, and not to that of others, Dr. Rush confided the performance of his testamentary dispositions.

My judgment being at variance with that of others, I would lay myself open to charges which might be made in another bill, if I abandoned that which I have deliberately formed and announced. I may be wrong, and they may be right, and the testator might well have chosen many very much better fitted than myself to do the work imposed upon his executor, but *he* did not think so. We had been friends and connections from early manhood through lives so long protracted that almost all those whom he had known and trusted had gone. For twenty-five years I had been the trustee of himself and his wife. For upwards of half a century I had been his counsellor and adviser, and for these reasons he preferred me. Because I knew his *legally expressed* wishes, and intended, to the utmost of my ability, faithfully to execute them, I accepted the trusts he confided to me.

When I first met the managers of the Library Company, after Dr. Rush's death, I expressed to them my willingness to co-operate and consult with them in reference to any matters relating to his will. I also mentioned to them that Dr. Rush, a few days before his death, had made gifts of objects of art and convenience to several of his personal friends, which he caused me to write down in the presence of a witness. He did not add them to his will, because it was difficult for him to write his name lying on his bed; and because I assured him that I would assume any pecuniary responsibility that might be incurred, if the Library Company (although they had no legal power to consent) would only intimate their acquiescence, which I was confident they would do. (See letter to Dr. Willing, Exhibit B.) To neither of these suggestions did I receive any reply. The managers were entirely and studiously silent, and I was obliged, by the advice of my counsel, to forego the gratification of carrying out the last wishes of my dying friend.

Although the complainants do not deny that I have desired and intended to carry out the wishes of the testator, yet I have been met with dictation and resistance, direct and indirect, and a constant struggle to obtain the control of his estate; and he has been rewarded, certainly not with thanks, for on

the 5th day of October, 1869, by a majority of twenty-five, the complainants, in ordering the transmission of a copy of what they called their vote of acceptance, *voted down* a resolution "acknowledging the high appreciation by the company "of the confidence reposed in them by Doctor Rush, and of "their cordial willingness to unite in carrying out in the most "beneficial way his philanthropic intentions." Persistent efforts to evade and violate his directions have culminated in the "*prayer for relief*," from the plainly written directions and conditions of the will, to the benefits of which they most tenaciously cling,—a prayer which does not stop with the demand for an injunction against using a lot in favor of which I am said to be prejudiced, but which will, if granted under the pretence of carrying out the true (!) intent and purpose of the testator, not only prevent his chosen agent from building where he thinks "most expedient," but will confer upon an entire stranger, acting at the suggestion, and upon the inspiration of a company, [which, if their appreciation of the privations inflicted by the receipt of more than a million dollars grows much keener, must ultimately refuse it,] the right to say how much shall be paid for a lot, where it shall be located, the amount which must be expended in a building, and how it shall be constructed.

If it is not for the interest of complainants, as to which they alone can judge, to accept Dr. Rush's magnificent bequest in their favor, they are under no compulsion to do so, for he could not force them to see their interests as he saw them; but, if they do accept, it must be subject to the conditions imposed, viz., the exercise of my discretion as to location and construction, and the other directions of his will and codicils.

I would have been most happy to have shown to the Library Company all my plans, to have given to all their suggestions patient and careful attention and consideration, and to have deferred to their wishes where no duty prevented, had I been met with friendliness instead of with fault-finding, suspicion, and attack; but now, after all that has occurred, and the efforts which have been made to compel me to disregard my solemn oath, as an executor, to act in accordance with my judg-

ment, I decline to produce my plans, or to give any information concerning them upon demand in a hostile bill, particularly whilst the details, provisionally adopted, are still subject to alterations.

Since the filing of this bill I have consulted with the gentlemen who are named in the will as my successors—Alexander Biddle and Thomas Craven—and I have ascertained that they agree with me in the opinion that the site I have selected is the "most expedient" which could be chosen.

I will now, after having thus met generally the charges of the bill, answer in detail its specific allegations.

2. I am willing to admit all the facts charged in the first, second, third, and fourth paragraphs of the bill, saving that "the profits are *not* employed for the use and benefit of the shareholders." I aver that, as stated in the third paragraph, the profits are so employed because used in the purchase of books which become their property.

3. I am advised, and therefore aver, that the complainants are not a corporation for *charitable* uses, as charged in the fifth paragraph, and that they are not as such entitled to the aid of a Court of Chancery for preserving and protecting their rights. The property of the corporation is owned by shareholders whose stock, representing a certain pecuniary value, is bought and sold in the market at varying prices. There is nothing in their charter to prevent them, by unanimous consent, from selling their property and dividing it amongst themselves. The public, who are permitted by a by-law merely to use the books in the library building under the control of the company, have only a revocable license, and not a right, to do so. A copy of the company's rules, marked Exhibit C, is hereto annexed. The books belong to the stockholders, and the surplus revenue is used to increase their number and value. It is charged on the third page of the bill itself that the original purpose for which the corporation was created was the *collection and use of books by the* SHAREHOLDERS *at their houses as a circulating library*.—That purpose has not been changed.

In case of the company's non-acceptance, the Ridgway

Library will be constructed as a "*Public*" library, and a great charity will then be inaugurated; but Dr. Rush made no condition that the public should be admitted to the benefit of the bequests to the Library Company, and though allowing them to permit others to use their books for a pecuniary consideration, he expressly prohibited an increase of the number of shareholders.

4. I admit the truth of the statements in the sixth, seventh, eighth, ninth, tenth, and eleventh paragraphs of the bill, concerning the desire of the Library Company for a fire-proof building and the provisions of Dr. Rush's will; but for greater certainty pray that the will itself may be referred to. (See Exhibit "A.") The purpose to erect it as a monument to his wife and her father, however, was, if not preliminary, at least cotemporaneous with, and not subsequent to, his design to provide such a building for the Library Company.

5. I admit, as charged in the twelfth paragraph, that "it is clear the testator expected and designed that the building he directed his executor to put up would be used if the Library Company were willing to accept the conditions imposed upon them as a place of deposit for their own books as well as those purchased with the funds provided by him." He gave such directions as will prevent for the present the accumulation of much income from his estate for the purchase of books, and he must, therefore, have expected that those of the Library Company would be placed therein. The building was "to accommodate and contain all the books of the Library Company of Philadelphia and to provide for its future extension." (Will, page 4.) When finished, it was to be conveyed "to the Library Company of Philadelphia and their successors and assigns, for the use and purposes of their library and for no other use or purpose whatever." (Will, page 5.) The surplus income was to be used (Will, page 7) "to pay all necessary salaries of the librarian and his assistants, and the expenses of binding and preserving the books of the *whole library*, making cheap catalogues, and all charges incident to its care and management. The said library is to be kept open from 9 o'clock A.M. until at or near sunset, except on Sundays and holidays."

In his codicil of 1867 (Will, page 23) he repeats his intention that his executor should erect for the Library Company a building not only large enough to contain their present books, but also their probable increase for many years to come. He certainly intended that the building should be used in good faith for the deposit of their books by the Library Company. He provided for the construction of a "monument," and not of a vault. I am advised, and therefore aver, in agreement with the charges of the bill, that an acceptance of this building when erected by the Library Company will be upon the condition that it will be used in good faith, as such place of deposit for *all* their books.

I consider the averment in the second section of the 12th paragraph of the bill as immaterial, and admit it, if by "mode of user" is meant a use at the houses of the shareholders.

I deny the averments in the third section of said paragraph. I am advised, and therefore aver, that the complainants are not a charitable corporation, and that the discretion given me to select a site for the library building is not therefore in the nature of a trust for them; but that if the law and the facts are as stated in the bill, then as the will speaks as of the day of the testator's death, if, in his lifetime, by his own act, he disqualified me from the exercise of the discretion given to me by the will, the bequest to the Library Company being dependent upon the exercise of that discretion as a condition precedent to the vesting of the estate, no Court of Chancery can dispense with the performance of that condition.

I am advised, and therefore aver, that my disqualification to exercise my discretion, supposing it to exist, having arisen from acts of the testator himself, the complainants can take no benefits under his will conditioned upon a prior exercise of my discretion, however ready they may be to comply with all the "other conditions and regulations."

6. I admit the truth of the averments and charges in the 13th, 14th, 15th, 16th, 17th, 18th, and 19th paragraphs of the bill; but I deny that the act of Assembly and the amendments to their charter were, as stated in the 18th paragraph, sufficient to enable them "to effectually accept the provisions of the will, and conditions attached by the testator to his gift."

7. I do not know whether or not the averment in the 20th paragraph of the bill, viz.: that, in the general opinion both of the directors and shareholders, the site selected was an undesirable one, is true, though I am willing to admit that a large number of the stockholders and directors objected to it. I deny that it is undesirable as a site for a building which shall contain the books of the Library Company. I deny that it was believed by "*all*" to be very inconvenient for the purposes of the Company, and that it was believed by much the larger number that such a site "would be injurious, if not destructive, to the interests and future prospects of the company, as the remoteness of the location from the residences or places of resort of all the shareholders or persons accustomed to make use of the books, would probably prevent the library from being used for the purpose for which it had been founded and always maintained, and hence the income derived from contributions of shareholders, without which the institution could not be supported or continued, would cease." As "evidence" in support of this denial, I refer to the fact, that in February, 1869, the stock of the company, worth at par $40 per share, sold for $39, and that in May and November, 1869, after the selection of the site was well known, it sold for $55 and $59 per share.

As further "evidence" of this, I refer to the alleged acceptance of the building, after elaborate arguments against it, on account of the proposed site, had been printed and widely circulated.

As I am ignorant of the "usual places of resort of nearly all the stockholders," which, if material, I pray may be shown, I cannot say whether this site is or is not half a mile south of them.

8. As to the 21st paragraph of the bill, I am advised that a *minority* vote is not evidence of a "general" conviction. I have no possible means of knowing, and am aware of no way by which complainants can possibly know, and therefore deny, that the 256 votes cast in favor of the discarded resolution that "so much of the present collection of books and other property of the company as may by the directors be

deemed expedient, shall be retained in the present or some other central position for general use and circulation," were part of the 298 votes cast in favor of the acceptance of the gift. I cannot understand the arithmetic—addition or subtraction, whichever it be—by which it is sought to make it appear, "that out of 591 votes cast, 549 were, in effect, cast against the removal of the collection of the library to that site," in view of the alleged fact that a majority voted for acceptance notwithstanding the site was well known.

9. As to the 22d paragraph, I deny that the complainants are "deeply impressed with the great advantages that might be derived from a proper use of the discretion given by the testator to his executor," or with any desire to avoid an "apparent violation of the cardinal intent of the testator," which was that I should erect "a proper building for the preservation and use of their library" in such a location as *I* deemed expedient. I deny, also, that they are "deeply impressed with the waste of money consequent on the erection of buildings so remote from each other for one common object," and, "as evidence," in support of this last denial, I aver that, since the meeting of October 5th, 1869, although a resolution looking to such an erection, because of the site selected, was then voted down, and one was adopted accepting the building, they have, without any reason for so doing, so far as I know, having been subsequently developed, contrary, as I am advised, to the spirit and meaning of the bequest in their favor, expended upwards of $67,000 in the purchase of a lot 110 feet in front, at the northwest corner of Locust and Juniper Streets, with the intention, as I am informed and believe, of erecting a library building thereon.

If two buildings are to be erected, and two distinct establishments are to be maintained, the waste will be the voluntary act of the company, and not of the executor, and in direct opposition to the conditions of the will.

10. I admit the passage of a preamble and resolutions by the complainants, such as is charged in the 23d paragraph.

11. I deny that I have ever disqualified or disabled myself from exercising a discretion as to the site of the library build-

ing. I aver that in making selection of the site at Broad and Christian Streets, I acted under the direction of the testator as contained in his will, and in the proper and legal exercise of the discretion thereby given to me.

12. I deny the truth of the averments in the 25th paragraph, in the form in which they are put. I admit that I did, at his request, "not in the extremity of the testator's last illness," but whilst his intellect was as clear and strong as ever, within a month of his decease, promise him verbally, to use the said lot of ground at Broad and Christian Streets as the site of the library building; and I aver, that at the time I made said promise I thought it the best lot for the purpose which could be obtained; and I aver, that after careful reflection and subsequent examination, I still entertain this opinion. I deny that I ever made "a promise not to exercise any discretion at all" in reference to the site, or that any such words ever passed between Dr. Rush and myself.

I said nothing which deprived me of the full power to form a judgment or opinion in reference to the propriety or expediency of selecting that situation. A promise to do a particular act does not prevent the formation or the expression of an opinion in relation to its propriety or expediency, and I believe that I am just as able to determine whether the site at Broad and Christian Streets is proper or beneficial, as if I had made no promise at all. An agent or trustee acting under a specific power can, surely, although legally and morally bound to comply with it, decide whether the object of that power is right or wrong, beneficial or injurious, and whether or not, in his opinion, some other course would not be preferable, although he may not be permitted to follow it. So, here, I believe I can determine the question as to the eligibility of the site as correctly as if the subject had never been mentioned by Dr. Rush.

I am sworn to execute the provisions of the will. One of these requires me to exercise an honest discretion, and I believe I have done so. If, however, my discretion under my oath had been in opposition to my promise, then I would have been obliged to reflect upon the course I should pursue; but

as my oath—my opinion—that of the testator—and my promise all point to the same conclusion, I conceive my way to be clear and my discretion not to be subject to be limited or controlled.

When I gave my promise, I was fully acquainted with most of the facts upon which I have since, under the will, formed my opinion. I was aware of the power I would be called upon to exercise if I became the executor, and believed that, in the proper exercise of that discretion, I would be able to fulfil my promise.

13. I admit the truth of the averment in the twenty-sixth paragraph, as to my verbal announcement at a meeting of stockholders held on the 29th June, 1869, of my intention to place the library building on said lot. I also aver, that I then stated that, in my own judgment, this lot was well adapted for the purpose intended.

I am not aware that any arrangement was made to meet, by voluntary contributions, the loss which would or might ensue from a sale of the lot so purchased. I never heard any arrangement even suggested to make up the additional amount which would be required to purchase another lot.

14. I admit that I wrote to Dr. Willing on the 30th December, 1870, the letter from which an extract has been given in the twenty-seventh paragraph.

Its statements are true. Though the letter to which it was a response gave no intimation of such intention, it was written with a knowledge of threatened litigation.

I annex a full copy of this letter as Exhibit B.

15. I am willing to admit the soundness of the advice alleged to have been given complainants in the twenty-eighth paragraph of their bill, saving that I am advised a court of equity will not in all, or even in many cases, exercise a discretion which the donee of the power is disqualified from exercising.

I do not care to deny that "the verbal directions of the testator, varying the nature of the trust and confidence reposed by him in the defendant," "were as absolutely null and void (legally) as those of a stranger;" but I cannot admit that this would be the case if the directions were in writing, even

though they were made within "one calendar month prior to the death of the testator." I aver that by keeping my promise to Dr. Rush, I exercise the discretion he reposed in me in entire accord with my best judgment—exercised after the assumption of the trust, and upon full, careful, and deliberate examination.

I admit the truth of the allegations in the 3d section of said paragraph, that "a court of equity will not interfere with a trustee in the exercise of a discretionary power;" but I am advised and therefore aver that complainants are not a charity; and I deny that the testator, who supposed that their own income would be sufficient, mainly intended to "furnish them with books." I agree that it "was certainly designed," they should administer the bequest in connection with their own property, "under one management, in one building, and with one corps of servants and assistants;" and I suggest that complainants, if they believe they cannot, consistently with their own interests, accept and use Dr. Rush's bequest as he intended, can decline it. I am advised and therefore aver that no court of equity has ever, "where the donee has not surrendered and bound his discretion before the trust has vested in him, interfered to prevent its improper (in the sense of injudicious) exercise."

16. I do insist, as charged in the 30th paragraph, that I have selected the said site in the exercise of my *own* discretion, unbiased by any promise; and I deny that any promise, however it may be felt to be morally binding, did prevent or can prevent my exercising, or knowing that I have exercised, my judgment. I aver, that I am now able to say what line of conduct I would have followed if I had never made a promise, and that I would have selected the site at Broad and Christian Streets, if Dr. Rush had been silent as to his wishes.

17. I do aver, as alleged in the 31st paragraph, that I had a right to select voluntarily the same lot which the latter had selected, "none the less" because he had selected it; and I admit my infinite satisfaction at being able conscientiously, and in fulfilment of his *written* requests, made "more than one calendar month before his decease," to gratify his wishes

as to the manner in which his money should be expended. The "excuses" in that paragraph charged to have been given by me, I have no recollection of having ever made.

18. I deny that "my determination or selection of the said lot at the southeast corner of Broad and Christian Streets, as a site for the building to be erected under the trusts in the will contained, is wholly" (or partially) "nugatory, void, and ineffective," as charged in the 32d paragraph of the bill. I am advised and therefore aver, that an alteration in a will withdrawing some of the powers conferred for the benefit of any corporation, "if otherwise made in the most lawful and binding manner," would not be wholly void and of no effect, by reason of having been made within one calendar month prior to the testator's death.

19. I demur as to the materiality, and deny the correctness, of the charge in the 33d paragraph, that the site selected is "utterly ruinous and destructive of the general purposes for which the complainants were incorporated;" and as "evidence" of this, again refer to the action of the majority of the complainants, who would never have brought down this ruin upon themselves by accepting the bequest that occasioned it; and to the acts of those of them who, in November, 1869, voluntarily paid $20 more for each share, though it had been thus ruined, than they were ever before willing to give.

I deny that the selection of this site "compels an election (by complainants) not authorized by the will," or that it compels them "either to place their collection of books where "it will be utterly or comparatively useless to their share-"holders, or else lose the benefit of the inestimable gift of the "testator to them of a building to contain their books and "property."

The *will* not only authorizes, but *compels* the complainants to elect whether they will accept the building upon the site I select or not, and this, though the site be, what I deny most emphatically, utterly unfit for the purposes of their library, and though it might be more advantageous to them to dispense with this election, and to use the money in the way *they* think most to their interest.

I deny that my selection is disadvantageous to the object proposed by the testator, or to anything "which it was the manifest design of the testator to promote." Whilst nothing *in the will* justifies the complainants' assertion, his well-considered acts in selecting the site at Broad and Christian Streets, and his solemn injunctions to adhere to it, even if not registered in a form legally binding, shed such light upon his "cardinal intent," as understood by himself, as to render it absurd to allege that it will be defeated by my selection of the very site he so decidedly preferred.

I deny and condemn as utterly subversive of sound morals and testamentary right, as utterly unfounded in law, and monstrous as ground for equitable relief, the doctrine, that even if my "selection of the site were made, under an unbiased discretion," because, "contrary to their (complainants') wishes," and thought by them to be "injurious to his intended beneficiaries," this court would or could "interfere and control the defendant in regard to the selection of a site."

Though the complainants, after a thorough discussion, in a largely attended meeting, held specially on the 5th October, 1869, refused to authorize a separation of their collection of books, I admit the truth of the charge, that by their subsequent acceptance of the act of Assembly, and the amendments to their charter, they made a distinct election "not to allow their collection of books to be removed to the building to be erected by the defendant, if placed on the proposed site on Broad Street." This inference is clearly established by the clause in the said act authorizing them to act as trustees, "only in such manner that the real and personal property of the company, including such books, pictures, statues, and other works of literature and art as now are or hereafter shall be held by them in their own right or on any other or different trusts, shall be in no wise affected hereby, but shall remain and be under their entire and exclusive control and disposition," which means, that, in accepting Dr. Rush's bequest, whatever site be selected, they shall not, and cannot, deprive themselves of the right to put their books there or elsewhere, at their uncontrolled pleasure.

21. I deny the correctness of the charge in the thirty-fourth paragraph, that the "selection of the said site will not only be destructive of their own interests, as aforesaid, but will also frustrate the main intent of the testator," and I dispute the relevancy, as proof, of the remaining allegations in said paragraph.

The vice of the argumentative averments in said paragraph lies in their assumption of what has not been shown, viz., the necessity for the erection of two buildings, and of their right, after receiving a conveyance of the building, to use another as a permanent depository for their collection of books. If they do not intend to occupy it for "the uses and purposes of their library," good faith should dictate a non-acceptance.

Though it is not necessary to discuss the practicability of an experiment which they have no warrant or power to try, viz., whether their income will be sufficient to maintain two establishments, I feel very confident that they will be in the receipt of a much larger one than they allege.

In addition to that admitted, viz:— . . .	$8,884 47
They will have the interest upon the proceeds of the sale of their present building, at a moderate estimate, $100,000	6,000 00
Upon the annuity fund, eventually, say . .	12,000 00
And, most probably, upon $100,000, which I hope to save by accumulations . . .	6,000 00
	$32,844 47

Besides this large income, the complainants admit (Bill, p. 4) that they have a building fund of $90,000, which will provide ample means for all improvements or additions, whenever they may be required.

They have no right to control my honest expenditure in the erection, even though it exceed $700,000. In carrying out testator's plans and my own views of what is requisite, I will be justified in spending the whole estate excepting the annuity fund. (Will, p. 24.) If necessary, I will do so; but I do not intend to pay for the work he has directed to be done,

any more than will be absolutely necessary. The Library Company will receive the benefit of all that is saved.

If compelled to buy another lot, sufficiently large, within the limits approved by complainants, I can hope to save nothing, and will be compelled to delay building for many years.

22. I deny that the intended site for the library will have the effect of preventing "the increase of the number of persons resorting to it," and thus prevent "the increase of its income," whereby "a large revenue" will be afforded "for the increase of the collection." But even if the site should have this effect, it will not frustrate the main intent of the testator, "who had observed large annual incomes in corporate bodies almost invariably lead to wasteful extravagance, and cause the institutions to be the prey of schemers," and who, therefore, determined to restrict that of the complainants. I deny that the "cardinal intent," or even the secondary intent, of the testator was to provide an income for the complainants, or to do more than secure for them a splendid building erected upon such site and in such manner as I should think "most expedient." He restricted their income to that ultimately to be derived from the annuity fund. The possibility of losing shareholders by an acceptance, will weigh with complainants when deciding that question, but cannot be assigned as a valid reason for asking a court of equity to annul Dr. Rush's will. I feel justified, however, in quieting the apprehensions of complainants that such of them as have recently bought stock at an advance of $20, will forfeit it for non-payment of dues and thus diminish their income.

23. I am advised and therefore aver, that it is not the duty of the complainants, and that they have no right to apply for relief to this court. I therefore demur to so much of the bill as charges such right and duty, and to the whole of the relief prayed for, and assign the following grounds for such demurrer:—

I. There has been as yet no valid acceptance of the bequests of the will. There can be no binding agreement to accept them until after the entire completion of the building. Dr.

Rush gives no estate to complainants until after such completion. The alleged acceptance of the fifth of October, 1869, is not binding upon them or their successors, but is a simple expression of willingness to receive a gift, and is revocable until receipt of a conveyance.

II. None of the preliminary conditions prescribed by testator have been complied with.

a. No binding agreement to comply with these has ever been executed and delivered. This is made a condition precedent to the vesting of any estate or right.

b. The clauses (see p. 3, of this answer) which the testator ordered to be inserted in an act of Assembly, have not been inserted in the one drafted by the counsel of the company, nor in any other.

c. The act of Assembly drafted by complainants virtually prohibits them from acting as trustees under Dr. Rush's will, because it enacts that their property, books, &c., shall not be subject to the conditions of that will, but shall remain entirely under their own absolute control.

d. The order of Court by which they have sought to dispense with what the testator prescribed, is in direct opposition to the act of Assembly by which it is pretended to have been authorized. The act permitted the company to act as trustees "only in such manner that the real and personal property of "the company held by them in their own right" should be in no wise affected by Dr. Rush's will and codicils, "but should "remain and be under their own entire and exclusive control "and disposition." The order of Court attempts to interfere with this control and disposition, by saying who shall act as directors, and the number of stockholders who shall use it, and by forbidding a connection with any other body corporate or politic. It is therefore utterly null.

e. The reservation of an exclusive control in the Library Company over their books, &c., is in opposition to the condition imposed by testator, that there must be no non-exclusion of books differing from "ordinary or conventional opinions."

f. The reservation of this control will prevent the complainants from binding themselves to use the building for the purposes of their library, and as a receptacle for their books

Without a compliance with these conditions, there can never be any conveyance or delivery.

g. The order only provides that "*so long*" as the Library Company shall act as such trustees, they shall do so under the conditions imposed by Dr. Rush's will; but, I am advised that I have a right to insist that upon conveyance and delivery of the building they must bind themselves to a perpetual subjection to those limitations, as the consideration to be given for Dr. Rush's magnificent present.

III. The alleged acceptance has been withdrawn. By their acceptance on the twenty-fifth of May, 1870, of the said act of Assembly, the complainants distinctly elected, as they allege, "not to allow their collection of books to be removed to the building to be erected by the defendant, if placed on the proposed site," and this election, so far as appears from the averments in their bill, was made in the belief that I was acting in entire accordance with the directions of the will, for they aver no knowledge until the receipt of my letter of the thirtieth of December, 1870, of my having made any, supposed to be disqualifying, promise. The purchase, in January, 1870, of the lot at Locust and Juniper Streets, with a view to erecting a library building thereon, in direct opposition to the provisions of the will, was also, it is charged, a withdrawal of their former acceptance.

IV. The complainants are not a charitable corporation, nor within the protection afforded to charities by courts of chancery.

V. The interference by the Court in favor of a *private* corporation, such as the complainants are, will be in prejudice of a great charity for the benefit of the *Public*, which "the Ridgway Library" will be, if endowed under the provisions of Dr. Rush's will, in the event of the refusal or omission of the complainants to accept the devises in their favor.

VI. The Court has no jurisdiction to control my discretion in the selection of a site for the building, nor in the execution of any of the trusts of the will.

24. I pray that I may, under the provisions of the rule of

Court in such cases made and provided, be permitted to avail myself of all matters of defence in law, or to the merits of the bill, in my above answer stated, of which I might have availed myself by demurrer, or plea in bar, with the same force and effect as though I had filed a separate demurrer or demurrers, plea or pleas in bar.

25. I pray to be hence dismissed with my reasonable costs and charges in this behalf most wrongfully and needlessly sustained.

HENRY J. WILLIAMS.

JOHN G. JOHNSON,
GEORGE JUNKIN,
GEORGE W. WOODWARD,
Solicitors for Defendants.

CITY OF PHILADELPHIA, *ss.*

Henry J. Williams, being duly sworn, deposes and says that the facts in the above answer stated as of my own knowledge are true, and that those stated upon the information of others are true to the best of his knowledge and belief, and that the above demurrer is not interposed for purposes of delay.

HENRY J. WILLIAMS.

Sworn to and subscribed before me this sixth day of July, 1871.

SAMUEL C. OGLE,
Not. Public.

EXHIBIT B.

CHESTNUT HILL, Dec. 30th, 1870.

MY DEAR DOCTOR: I did not intend my note of the 17th instant to be a formal reply to the resolutions of the directors of the Library Company, nor to prevent the committee from having the conference they requested. So far from it, that I mentioned both time and place at which I would have been happy to meet them. I cannot, however, conceal my conviction, that nothing they could say would change my intention of placing the Ridgway branch of the Philadelphia Library on the lot purchased by Dr. Rush for its site; and after all that has taken place, I must confess I am a little surprised that they should again ask me to do so. Judge Hare and yourself must both be fully aware (for I have stated them, I believe, both orally and in writing) of the circumstances connected with the selection of that lot for this purpose; but, as Mr. Lea, one of your committee, is a new member, I shall repeat them, even at the risk of being unnecessarily tedious in my answer; for I cannot believe the directors could expect *me* to make the change they desire, if they fully appreciated my position.

Some weeks before Dr. Rush's death he was very anxious to have the location of the intended building finally fixed and settled; and he desired me to ascertain the size and cost of all the vacant lots on Broad Street, on which street he desired it to be placed. I procured statements of the sizes and prices of all I thought at all suitable, from Vine to South Street, but he was satisfied with none of them. Another gentleman brought him a plan of the lot on Christian Street, and he was so much pleased with it that he directed me to buy it at once. I did so; and when the contract was signed and a part of the consideration paid, he expressed great pleasure that it was concluded, as it relieved his mind from all anxiety. Some days after, he recurred again to this subject, as it had probably occurred to him that he had given me an absolute discretion as to the situation of the library by the terms of his will, and that I might

be induced to overrule his decision after he was gone. He called me to his bedside and asked me to give him a promise that I would *build the library on that lot and nowhere else.* I gave him this promise as fully and solemnly as language could express it, and he then thanked me and said he could now die in peace. Now, do you think it would be at all consistent with truth and honesty for me voluntarily to violate a pledge given under circumstances which render it as sacred as an oath, and made to a dying man who had confided to me the management of his whole estate? Would you, with your well-known delicacy and sensibility to all honorable engagements, feel yourself justified in doing so, were the case your own, and should I not lose your respect and regard (which I value very highly) were I to hesitate for a moment as to what was my duty?

And what is the reason assigned why I should do this?—"to gratify the wishes of the shareholders." But have these shareholders shown such an appreciation of the magnificent gift of Dr. Rush (which is only subject to their future acceptance) as to render his representative very desirous to comply with their wishes, in opposition to the repeatedly and earnestly declared intentions of Dr. Rush, and to his own deliberate judgment? When the question was first presented to them, these shareholders, by a majority of five, accepted his bequest, but, by a very much larger majority, refused to pass a resolution expressing their gratitude for his gift. True, at a subsequent meeting they adopted such a resolution, but it was only on second thoughts; and it may be doubted whether it was not agreed to because of the extraordinary position in which they would be placed, if they were to take his money and refuse to admit they were obliged to him.

I have said that to assent to the wishes of the shareholders would be in opposition to my own deliberate judgment, and I mean this in its fullest extent. I think that, considering its size, its price, and the description of library Dr. Rush intended to endow, there is not an attainable position on Broad Street, of sufficient size to meet his views, which is preferable to the one he has himself selected.

There is one other matter to which I refer rather unwillingly, but as I shall not probably have any further commu-

nication with the directors on this subject, I have determined to mention it.

During the three or four weeks previous to Dr. Rush's death, he desired me on various occasions to make pencil memoranda of several articles which he directed me to give to his friends as remembrances. I reduced these memoranda to form; wrote them in ink, and read them over to him in presence of Miss Little, a friend who was constantly with him. They were not signed because his physical weakness rendered his writing a labor, and he did not wish his tremulous signatures to be attached to his will. I said to him, no one could object to them but the Library Company, and if they gave their assent, however informally, I would assume the pecuniary responsibility and carry out his instructions. I mentioned all these facts to the directors, at one of the only two meetings I have attended since Dr. Rush's death, and stated the value of those articles would not exceed $2000—and several were intended for me, but I declined to take any of them, and spoke only for the sake of others.

No notice was taken of this request, and after waiting many months I consulted my counsel whether I might not consider these memoranda as part of Dr. Rush's will and carry them into effect.

They both advised me strongly against it, and I was obliged to inform the intended beneficiaries, that for want of the assent of the Library Company, they could not have their remembrances.

Now, the Library Company give me notice that the company "are now ready to undertake the performance of their duties as trustees for the Ridgway branch of the Library,"—*duties* and *trusts* which I understand commence only when the building is finished; but I am not aware that they have shown, in any one instance, a disposition to comply with the last instructions of one whom I shall always consider as their munificent benefactor.

Very truly yours,

H. J. WILLIAMS.

DR. CH. WILLING,
Chairman.

EXHIBIT C.

Rules to be Observed by the Library Company of Philadelphia.

I. THE Librarian shall attend at the Library, every day (Sundays excepted) from the first day of April until the first day of October, from two o'clock P.M. until sunset, and from the first day of October until the first day of April, from one o'clock P.M. until sunset. He shall enter in the catalogue, kept at the Library, such books as may be purchased or added to the Library, label and number the same, as well as all others from which the label or number may be torn off or defaced. He shall also replace the books on the shelves, as they are brought in, as soon as he conveniently can, first having examined whether they are free from damage.

II. He shall lend to any member,

One Folio for five
One Quarto for three
One Octavo, or
Two Duodecimos, for two } Weeks,

and no greater number, unless on hire, or so connected as to be otherwise useless. Such persons, however, who reside at the distance of seven miles or upwards, are permitted to have books one week longer than the above-mentioned times. For all books so lent he shall take a note, payable to the Company, for double the value, as nigh as he can estimate, of the book or set of books to which they belong, conditioned to return the same, undefaced, within the time above mentioned; at the expiration of which (unless application has been made by another member for the same books, and the Librarian requested to take a memorandum thereof), the borrower may, on producing the book to the Librarian, renew his note for the like time.

III. Every person, not being a member, who shall hire a book, &c., shall first give a note for double the value thereof, in the same manner, and be subject to the same regulations, as a member; and shall also deposit, as security, in the hands of the Librarian, double the value of such book or books; but if the book or books should belong to a set, then such person shall deposit treble the value of the volume or volumes which he shall so take out.

IV. Every member, or other person, who shall take out a book or books on hire, shall pay, for the use of the Library, the following rates, weekly: For Duodecimos and Octavos, two-sixteenths of a dollar; Quartos, three-sixteenths of a dollar; and Folios, four-sixteenths of a dollar; and no smaller sum, although the book may be returned within the week.

V. Every member, or other person, who shall neglect to return the book or books within the time specified in the second rule, shall, for such neglect, pay to the Librarian, for the use of the Library (besides the hire, where the book is not taken out by virtue of a share), two-sixteenths of a dollar per week; and if not returned, undefaced, within one month from the expiration of the time limited in the note, the fines and hire accruing thereupon shall be doubled; and if not so returned within three months from the same period, the note or deposit money shall be forfeited to the Company.

VI. Books returned are to be delivered into the hands of the Librarian, to be examined whether damaged or not.

VII. No person from whom any hire or forfeiture is due, or who hath damaged any book, shall be permitted to have another book till satisfaction be made.

VIII. If a member, and one who is not a member, should apply for the same book at the same time, the member shall have the preference.

IX. A member may take out on hire, without a deposit, as many books in value for which his share in the Library shall, by the Librarian, be deemed a sufficient security, on the same terms, in other respects, as persons who are not members.

X. The Librarian shall furnish the Directors, at each monthly meeting, with an account of the fines and forfeitures which have accrued during the preceding month.

XI. The Librarian is to conform to the instructions of the Directors with regard to such books as, from their scarcity and value, are to be let out only on certain conditions, or not at all.

XII. No person, whether a member or not, is to lend the book or books he borrows to any person out of his dwelling-house.

XIII. No book shall be lent on the share of a deceased member, unless the note be signed by all the executors or administrators of such deceased member, or by some one of them, appointed and authorized by written orders of the others.

inches
centimeters
1 2 3 4 5 6 7 8 9 10 11 (A) 12 13 14 15
L* 39.12 65.43 49.87 44.26 55.56 70.82 63.51 39.92 52.24 97.06 92.02 87.34 82.14 72.06 62.15
a* 13.24 18.11 -4.34 -13.80 9.82 -33.43 34.26 11.81 48.55 -0.40 -0.60 -0.75 -1.06 -1.19 -1.07
b* 15.07 18.72 -22.29 22.85 -24.49 -0.35 59.60 -46.07 18.51 1.13 0.23 0.21 0.43 0.28 0.19
16 (M) 17 18 (B) 19 20 21 22 23 24 25 26 27 28 29 30
L* 49.25 38.62 28.86 16.19 8.29 3.44 31.41 72.46 72.95 29.37 54.91 43.96 82.74 52.79 50.87
a* -0.16 -0.18 0.54 -0.05 -0.81 -0.23 20.98 -24.45 16.83 13.06 -38.91 52.00 3.45 50.88 -27.17
b* 0.01 -0.04 0.60 0.73 0.19 0.49 -19.43 55.93 68.80 -49.49 30.77 30.01 81.29 -12.72 -29.46
D50 Illuminant, 2 degree observer
Density → 0.04 0.09 0.15 0.22 0.36 0.51 0.75 0.98 1.24 1.67 2.04 2.42
Golden Thread
Colors by Munsell Color Services Lab
Don Williams

Thos. S. Riddle Esq

No. 1. July Term, 1871.

IN THE

SUPREME COURT

FOR THE

EASTERN DISTRICT

OF

PENNSYLVANIA.

IN EQUITY.

THE LIBRARY COMPANY OF PHILADELPHIA

vs.

HENRY J. WILLIAMS.

ANSWER.

JOHN G. JOHNSON,
GEORGE JUNKIN,
GEO. W. WOODWARD,
Solicitors for Defendants.

Collins, Printer, 705 Jayne Street.

No. 1. July Term, 1871.

IN THE

SUPREME COURT

FOR THE

EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

THE LIBRARY COMPANY OF PHILADELPHIA

vs.

HENRY J. WILLIAMS.

EXAMINER'S REPORT OF TESTIMONY.

RICHARD S. HUNTER,
Examiner.

COLLINS, PRINTER, 705 Jayne Street.

In the Supreme Court for the Eastern District of Pennsylvania.

July Term. No. 1. 1871.

IN EQUITY.

THE LIBRARY COMPANY OF PHILADELPHIA

vs.

HENRY J. WILLIAMS, ESQ.

Depositions of Witnesses sworn or affirmed and examined before me in the above case, at my office, No. 735 Walnut Street, on the 24th of November, 1871, and subsequent days, in pursuance of Order of Court.

RICHARD S. HUNTER,
Examiner.

COMPLAINANTS' PROOFS.

First Meeting, November 24, 1871, at 1 P.M.

Present—WILLIAM H. RAWLE, Esq., of Counsel for Complainants.

GEO. JUNKIN, Esq., and JOHN G. JOHNSON, Esq., of Counsel for Respondent.

HENRY WHARTON, Esq., one of the Directors of the Library Company, and the Examiner.

LLOYD P. SMITH, affirmed.

Q. You are the librarian of the complainants?

A. Yes, sir.

Q. As such, have you in your custody the charter and other title papers belonging to that institution?

A. Yes, sir; or rather as Treasurer of the Company.

Q. Be kind enough to produce the charter of the 25th of May, 1742.

[**Ex. No. 1.**] Charter produced and marked Exhibit No. 1.

Q. Please produce the deed of March, 1760, from James Logan's Executors to William Allen and others.

[**Ex. No. 2.**] Deed produced by witness and marked by the Examiner Exhibit No. 2.

Q. Produce the Act of Assembly of the 31st of March, 1792.

[**Ex. No. 3.**] Act produced by the witness, and marked Exhibit No. 3.

Q. Please produce the by-laws or the regulations, and say if those contained in Mr. Williams' answer are correct?

A. They are correct as set forth in Mr. Williams' answer on page 32.

Q. Is there not another one, Mr. Smith, which is not there, about civil people who can use the library?

A. That comes in in another place.

Q. Please state for what purpose the surplus funds of the Library, after payment of the necessary expenses, are devoted.

A. The surplus funds are all expended in books and binding.

Q. No portion of them being devoted to the pecuniary use of the stockholders?

A. No.

Q. If necessary, can this be verified by your Treasurer's account?

A. Yes, sir. Here is the last Treasurer's account, and here is a résumé of the receipts and expenses of last year.

[**Ex. No. 4.**] Placed in evidence, and marked Exhibit No. 4.

Q. Please produce the account of what is known as the building fund.

[**Ex. No. 5.**] The witness produces such account, and it is marked by the Examiner Exhibit No. 5.

Q. Please produce the resolution of the Library Company for the investment of the Building Funds in the property at the corner of Juniper and Locust Streets.

A. Here is the Report of the Committee appointed December 2d, 1869, in which they recommend the purchase of the property. On January 6th, the Committee on purchase of the lot reported payment to John Livezey of $6819 77 out of the Building Fund for two houses on Juniper St. I don't find any formal resolution of the Board instructing them to do it, but after making a report recommending it, at the next meeting but one they reported the purchase. At the intervening meeting, December 14th, 1870, the Treasurer was authorized and directed to sell certain securities, and the Trustees of the Building Fund were authorized to sell 11,000 City Sixes and 15,000 Pennsylvania Sixes. The object of that was to provide money to pay for this lot and ground. It was a virtual endorsement of the Committee's report, and I presume it is a mere matter of omission on the part of the Secretary that there was no formal resolution entered.

[**Ex. No. 6.**] The appointment of committee given in evidence, and marked Exhibit No. 6.

[**Ex. No. 7.**] The report of committee also given in evidence, and marked Exhibit No. 7.

[**Ex. No. 8.**] The action of the Board approving the report of the committee given in evidence, and marked Exhibit No. 8.

Q. There appears to have been no action taken on the report?

A. No.

Q. Except that implied by the action taken after that?

A. Yes, sir.

Q. Have the kindness to produce the deed from Mr. Livezey and wife to the Library Company.

[**Ex. No. 9, Ex. No. 9a.**] Deed produced by the witness, dated Jan. 1870, and marked Exhibit No. 9, also deed from John Rice, marked Exhibit No. 9*a*.

[**Ex. No. 9b.**] Plan also produced showing the ground conveyed, given in evidence, and marked Exhibit No. 9*b*.

Mr. Rawle now produced the will and codicils of Dr. Rush, and gave them in evidence.

Q. Please state at what time notice was given to the complainants of the probate of Dr. Rush's will.

A. The notice was a verbal one, given at the meeting of the Directors held on June 3d, 1869.

Q. Please produce the minutes of the meeting of the Library Company, of the 29th of June, 1869.

A. I do so.

[**Ex. No. 10.**] Minutes given in evidence, and marked Exhibit No. 10.

Q. Please produce the minutes of meeting of the 5th of October, 1869.

A. I do so. It was an adjourned meeting of the shareholders.

[**Ex. No. 11.**] Given in evidence, and marked Exhibit No. 11.

Q. Please produce the minutes of the meeting of the 19th of October, 1869.

A. There was no meeting of the 19th. There was one on the 21st, an adjourned meeting. An election was held on the 19th. I produce a report of the election, signed by the tellers; there were no minutes taken. It was an election.

[**Ex. No. 12.**] Report of the election produced, and marked Exhibit No. 12.

Q. Please produce the minutes of the meeting on the 21st of October, 1869.

A. They are here.

[**Ex. No. 13.**] Produced and marked Exhibit No. 13.

Q. Please produce the Act of Assembly of the 23d of January, 1870.

A. It is here.

[**Ex. No. 14.**] Produced and marked Exhibit No. 14.

[**Ex. No. 12a.**] The questions on which the vote was taken, given in the shape of printed resolutions, produced, and marked Exhibit 12*a*.

Q. Please produce the minutes of the meeting of the 25th of May, 1870.

[**Ex. No. 15.**] Produced by witness, and marked Exhibit No. 15. p 146

Q. Please produce the order of the Court of Common Pleas in pursuance of that act.

A. Produced by Mr. Rawle.

[**Ex. No. 16.**] Petition produced, dated Oct. 31, 1870, and certified copy, which was marked Exhibit No. 16. p 149

Q. Please produce the resolution of the Directors on the 10th of December, 1870.

[**Ex. No. 17.**] Produced and marked Exhibit No. 17. p 157

Q. How many meetings were held between that of the 3d of June and that of the 29th of June, 1869?

A. Two, sir.

Q. Give their dates.

A. The 10th and the 24th of June.

Q. Please state whether at either of those meetings Mr. Williams requested the Directors to allow him to carry out Dr. Rush's memoranda as to some verbal gifts of articles referred to in the letter on page 31 of his answer.

A. There is nothing to that effect, sir.

(Objected to, unless Mr. Smith has stated that he has put upon the minutes all that has occurred.)

(Witness resuming.) I am not the Secretary; I have copied from Mr. Whitman's minutes, and this is a fair copy of the rough minutes.

Q. Were you present at these two meetings?

A. Yes, sir.

Q. Have you any recollection of any such request having been made by Mr. Williams?

A. Mr. Williams mentioned the subject, but I did not understand him as making any request for the Board to take action upon.

(Objection is made to so much of the answer as relates to what the witness understood.)

Q. Was that also your recollection?

(Objected to as leading.)

A. That is my recollection, certainly, that there was no request for the Board to take action upon it. If you wish it, I will say what my impression was.

Q. I don't want that; I want your recollection.

A. I have stated it.

Q. There is a statement at the end of paragraph 26 of the Bill, in which, at the meeting of the shareholders held the 29th of June, 1869, Mr. Williams, "in order to relieve himself from the pressure put upon him, assigned among other reasons for his determination, that a loss to the estate would ensue if the Broad Street lot were not used for that purpose. In answer to this, it was at once arranged that any such loss should be met by voluntary contributions in relief of the estate; whereupon, the defendant declined the proposition, and announced his final determination to place the building on that lot under all circumstances;" and the answer of the defendant, on page 19 of his Answer, avers as follows:—

"I am not aware that any arrangement was made to meet by voluntary contributions, the loss which would or might ensue from a sale of the lot so purchased. I never heard any arrangement even suggested to make up the additional amount which would be required to purchase another lot."

Please state whether you have any, and what, recollection upon the subject.

(Objected to as suggestive and leading, and that the witness should be asked what did occur on these occasions.)

A. My recollection is very indistinct upon that subject. I have heard, at some time or other, some proposition of that kind. I don't think it amounted to the words used here, "it was at once *arranged* that any such losses would be met by voluntary contributions." I think it was merely a proposition of somebody; whether at that meeting or not, my memory is not clear.

Q. Please look at the figures set forth by the defendant upon page 23 of his answer, as to the probable income of the Library Company, and state in what, if any, respect these figures are inadequate, or incorrect or insufficient.

(Objected to as leading, the proper mode of examining being to inquire as to the same facts.)

A. I see nothing incorrect in them; the first item is our own, $8884 47. The second item is interest on the proceeds of present building. I think that is estimated too high. It is a hundred thousand dollars. I doubt whether it would bring that much, apart from the Law Building. "The third item, the annuity fund, eventually $12,000." It may not be that for thirty or forty years. The last item I know nothing about—"most probably $100,000 by accumulations."

Q. Please say whether there is anything omitted to be put upon the other side.

A. Upon the other side of the account, as regards any income there would have to be deducted the taxes upon the building Mr. Williams would put up, which would leave very little for expenses. My own estimate is, it would leave nothing for the purchase of books.

(Objection is made to the latter part of the answer, as not being responsive to the question, but as an expression of opinion without any statement of the facts upon which it was founded.)

Q. In other words, I understand you to say that this estimate of the future income of the Library is based upon the exemption of the building, to be erected, from taxation?

A. Yes, sir.

Q. Supposing the cost of the building to be $800,000, what, at the present rate of taxation, would the tax amount to?

(Objected to as argumentative.)

A. You mean at $2 35?

Q. Put it down at $1 80.

A. At the rate of the present year, $1 80, if the building cost $800,000, the taxes would be $14,400.

Q. What part, if any, of the present library building and its appurtenances is exempt from taxation?

A. The building itself is exempt; it is exempt by special act of Assembly. The Law Building, owned by the Library Company, adjoining, we pay full taxes upon.

Q. When was it exempted?

A. In 1826.

Q. Please look at the figures printed in paragraph 34, page 25 of the Bill, and state whether from your knowledge you know them to be approximately correct.

(Objected to as being leading, and not proper examination.)

A. I believe them to be absolutely correct.

Q. That is, they are taken from particular years, and are about the same as they are there given?

A. I believe them to be correct, and the same as one of the exhibits given in evidence.

Q. You may state if the exhibited income of the last year will certify the correctness of it.

A. I think it is taken from the report of 1870, and there will be a certain difference, and the difference will not be great. It agrees very nearly with Exhibit No. 4.

Q. Have you prepared a list of the shareholders of the Library Company, classified according to their residences, for the purpose of showing whether the location upon the lot at Broad and Christian Streets would or would not be a convenient one for them as a place of resort?

(Objected to for any purpose, the witness being entitled to testify as to facts.)

A. My assistant is engaged in preparing such a list now at the request of counsel.

Complainants call for answer to letter of Defendant of 30th of December, 1870.

Cross-examination.

Q. By Mr. Johnson.—As to the accuracy of the minutes you know nothing? You did not keep them, Mr. Smith? They are not in your handwriting?

A. In some cases the original minutes are in my own handwriting, in others not. Mr. Whitman is Secretary of the Company; when he is present, he keeps the minutes, when absent, I keep them. In all cases I copy them into the Minute Book. They are first kept in a blotter.

Q. That is your handwriting in the Minute Book?

A. Yes, sir. I believe it to be absolutely correct.

Q. Is that blotter preserved?

A. Yes, sir. That blotter is preserved.

(The defendants object to the minutes as previously offered; it now appearing that they are mere copies, and that the original minutes, copied by the Secretary, have not been produced.)

Q. Mr. Williams presented a certified copy of the will of Dr. Rush, at the first meeting of the Directors, after the Doctor's death, did he not?

A. Yes, sir.

Q. It was the ordinary regular meeting?

A. It was the stated meeting, my recollection is.

Q. In the figures which have been presented in the Bill to which you have testified on page 25, no account is taken of your Building Fund, is it?

A. No, sir.

Q. And no account is taken of the sales-money of the present location?

A. No, sir; they are annual accounts.

Q. They are merely annual accounts of the income, excluding the Building Fund?

A. Yes, sir.

Q. That fund amounts, I think, to $90,000, does it not?

A. Yes, sir.

Q. You have had considerable experience with regard to

the library buildings in this city, and their position in regard to the payment of taxation, have you not, Mr. Smith?

A. Our own buidings; certainly, yes, sir.

Q. Is there a single library building in the city of Philadelphia which is now taxed?

A. I do not know.

Q. Don't you know the Mercantile Library building is not taxed?

A. I really don't know anything at all about it.

Q. You never heard that they were?

A. I never heard of any other exemptions than our own; not that I recollect.

Q. Have you known of any other being taxed but your own?

A. No, sir; I don't know anything about it. I have a faint recollection of having heard of the Mercantile Library being exempt. It is so indistinct that I could not testify to it one way or the other.

Q. Do you know the general policy through the country on the subject of taxing the library buildings, from your experience as librarian, and in the interchange of views and facts?

A. I know nothing upon the subject; my impression being, of course, that they are generally exempt. In regard to our own, I can testify that at one time they were taxed, and for several years. It was a serious drawback to the Company. About 1826 or 1827, a committee went to Harrisburg and got them exempt, for there was a period when we were taxed.

Q. At the meeting at which Mr. Williams was present a great deal was said that don't appear on any minutes?

A. Yes, sir.

Q. There was a communication and interchange of views of which no memorandum was taken upon the minutes?

A. Yes, sir.

Q. The design of the minutes is to express simply the acts of the Directors as a body?

A. Yes, sir.

Q. Have you anywhere a statement of the total cost of the lot on Locust Street?

A. Yes, sir; in that Exhibit of the Building Fund.

Q. Is it all in that one?

A. It is all there. There is a recapitulation of the receipts and expenses of the Building Fund from the account.

Q. Look at that, and state in dollars and cents the actual cost of that lot?

A. Cost of real estate, $70,000; expense of transfer, $617 24.

Q. How much incumbrance is now upon those properties?

A. Nothing but a small ground rent of about $17 in silver a year; it don't vary much from that.

Q. You cannot state what the contents of the lot now owned by the Library Company are?

A. The front on Locust Street, I understood, is 110 feet, and the depth about 234 feet.

Q. What buildings are upon it?

A. A number of small buildings.

Q. Can you state the revenue from them?

A. Gross revenue, October, 1870, to October, 1871, $3082.

Q. What is the charge for taxes?

A. $583 93.

Q. The net income is about how much?

A. The net income is $1846 87.

Q. The improvements are old and shackling, are they not?

A. They are.

Q. Of no value, in estimating the value of the property, do you think?

A. Very little, I should think?

Q. Have you anywhere upon the minutes a resolution showing any intention to improve that lot?

A. No, sir; it was bought partly as an investment of the Building Fund, and partly to be prepared in case we were ready to build.

Q. It was bought with a view of ultimately erecting a library building there?

A. Partly so, and partly as a good investment—so reported by the committee. There has been some talk, I see, of being driven out of our present location by the Post Office purchasing it, and I presume the committee had some desire to act about it.

Q. When was that first talked about?

A. It has been many years since it was first talked about.

Q. About eight years, is it not?

A. I suppose so.

Q. There were no meetings at which this subject was considered other than those whose minutes you have testified to, and which have been put sufficiently in evidence, were there?

A. I cannot say that. It often happens that at the meetings of the Board, informal conversations are had which do not appear upon the minutes; therefore, I could not say there was no meeting at which the question came up.

Q. Was there any action at all by the Board upon it at meetings other than those referred to?

A. I cannot say without referring to the Minute Book.

Q. Be kind enough to run your eye over it.

A. (Minute Book referred to.) The first minute I see referring to the subject is Nov. 4th, 1869. I find nothing else upon the minutes upon this subject.

Q. Was there ever a meeting of the stockholders called before or after the purchase of this property, to advise or approve of such purchase?

A. No, sir; not about this particular property.

Now here I find my memory refreshed by Mr. Rawle, by reference to the minutes of the stated meeting of the Company, held on the first Monday of May, 1869. The following was offered and unanimously passed, William E. Whitman being the mover:—

"*Whereas,* The present accommodations of the Library

are entirely insufficient for the preservation of the present number of books, without reference to any prospective increase, and the Building Fund has become very considerable in amount: Be it enacted by the Library Company of Philadelphia, that the Directors shall have full power and authority, whenever they shall think proper, to purchase a lot in the city of Philadelphia, on the best terms they can procure, and to cause to be executed on behalf of the Company any instruments necessary for that purpose."

Q. What date is that?

A. May 3d, 1869.

Q. Before Dr. Rush's death.

A. Yes, sir.

Q. Where does the last annual report of the Library Company to its shareholders appear in these minutes?

A. They make no report, sir. They never have made one.

Q. You remember the statement which was made to the shareholders with regard to this purchase at the last meeting?

A. No, sir. There was no statement made.

Q. It was so reported in the papers.

A. The annual report, made by the directors to the stockholders, consists in laying upon the table, on election day, the Treasurer's Report, which any stockholder can examine if he thinks fit. Hardly anybody ever does, and I don't consider it a report.

Q. You don't remember a statement made as to this fact?

A. I don't remember it. I don't know that any statement was made. It was a meeting called at the time of the annual election for the purpose of increasing the number of directors from ten to twelve, but I don't recollect anything being said about the Building Fund; there may have been incidentally. My recollection is that one or more reporters were present at the last annual election, and asked me for the figures of our Treasurer's report, and I

gave them verbally. It may be that I read a recapitulation of the Treasurer's report, but I do not remember doing so.

Re-Direct Examination.

Q. I omitted to call your attention to the 21st paragraph of the Bill, as to the causes which produced the votes cast at the meeting of the members on the 19th of October, 1869.

(Objected to as being a matter clearly not within the knowledge of the witness, which can only be his opinion at best, and which is wholly incompetent.)

A. I know nothing, certainly, of the motives which induced these particular votes. I can only state my impression. The first four resolutions were drawn up by the Directors and Joint Committee of stockholders and directors. It was intended to test the question whether the Company would accept or not, and as a general thing I believe that those who were in favor of accepting, voted aye to all four. There were some exceptions, but I believe that to be the case. That being the case, those who voted aye to the second resolution were opposed to moving the books—the second resolution being that "so much of the present collection of books and other property of the Company as may be deemed expedient, shall be retained in the present or some other central position." The ayes on that were 256; then I believe that those who voted no to that, acted mostly (not all, but generally) upon the simple principle of voting no to the whole thing. I can only state my impression. I don't know what the motives of the particular stockholders were.

(Objection is made to the answer as being incompetent in any view.)

Q. How did it happen that, on the first resolution, there

were 298 ayes and 293 nays, and, on resolution No. 4, the ayes are 268 and the nays 293?

(Objected to as being mere conjecture, and not testimony in any sense.)

A. The nays on No. 4 are 293, and are precisely the same number as the noes to the first resolution. The first resolution is one of acceptance; the fourth resolution is one of thanks; the same number of persons voted against accepting and against thanking, 293 in each case. I presume, therefore, they were the same persons. On the other hand, there were thirty persons more voted for the acceptance than voted for thanking, and by examining the other votes, it will appear that there were a great many more votes polled in favor of the first resolution than in favor of any of the others, it appearing, therefore, that a great many simply voted on the first resolution and not on the others.

(Report of tellers produced, and referred to by witness.)

(Witness resuming.) The highest number of votes cast was 591, which was on the first resolution.

Q. The total number you mean?

A. The total number of votes. 591 on the first, 575 on the fifth, 561 on the fourth, 557 on the second, and 514 on the third, showing that on some of the resolutions no vote was cast whatever by some persons. Therefore, I explain the vote on No. 4 by simply saying thirty persons, who voted on No. 1, did not vote at all on No. 4.

(The answer is objected to as being in no sense testimony.)

Re-Cross-Examination.

Q. By Mr. Johnson.—You know nothing at all of the reasons which influenced the people?

A. I know nothing. No.

Q. Your answer is founded solely upon the testimony which has been presented, and upon examination of it?

A. No, sir; by no means. It is founded upon my gene-

ral knowledge of what occurred at the time of the election, upon my personal knowledge of the views of the stockholders by personal intercourse with them. It is largely founded upon that.

Q. With how many stockholders are you certain that you conversed upon this subject?

A. I am not certain about how many; my impression is, I have talked with a large majority about it.

Q. Were they favorable to the acceptance or not?

A. There was a great division of opinion as to the acceptance.

Q. Do you know how the vote shifted upon the different resolutions, that is, how the men who voted aye on one voted upon the next, or do you merely gather your testimony as to that from the examination of the votes as reported by the tellers?

A. I know partly by personal knowledge.

Q. How gathered?

A. By conversation with the stockholders.

Q. With how many?

A. Well, I could not say. I know of my own knowledge that some voted on the first that did not on the others.

Q. That you gathered from hearsay?

A. I did.

(Mr. Johnson objects to any answers founded upon statement by other persons who may be called themselves to testify as to how they voted or would vote, and objects to the whole of the foregoing, inasmuch as the best testimony of the facts will be the production of the persons themselves who voted.)

Re-Direct Examination.

Q. Was there any other voting ticket than the one you have given in evidence?

A. No, sir.

Q. Was there any other paper for the purpose of voting on other than that?

A. No, sir.

Q. Exhibit 12*a* was the only paper voted on?

A. Yes, sir.

Q. Were copies of these distributed to persons voting?

A. Yes, sir; they constituted the ticket as soon as they were written on.

Q. By Mr. Johnson.—Was that voting *viva voce* or by ballot?

A. By ballot.

Q. Could anybody know how any particular man other than himself voted unless the man who voted communicated that personally to another?

A. Certainly not.

Q. Therefore you don't know of your own knowledge how these votes were cast?

A. No, sir.

Q. By Mr. Rawle.—Was not a large number of votes cast by proxy?

A. Yes, sir. I cast a few by proxy myself, where I was instructed to do so.

Q. By Mr. Johnson.—How were they cast on these different resolutions? How did you vote upon them?

A. I can only say as regards five or six.

Q. Take No. 1, how did you vote upon that?

A. I voted as I was instructed in all cases.

Q. Did you vote in some cases one way and in some another way? Were some votes for which you held proxies in opposition to the way in which others were?

A. No.

Q. All your proxies were voted in one way?

A. In one way.

Q. How were they cast on No. 1?

A. They were cast aye.

Q. On No. 2?

A. I think aye. I have not got the papers.

Q. On No. 3?

A. I think No. 3 was no.

Q. On No. 4?

A. I think No. 4 was aye, and I think No. 5 was aye, but I am not sure there may have been some of them that were merely in the affirmative on the first resolution, and nothing at all on the other. The only certainty I have in regard to those voters that I have acted as proxy for, was that when the proxy was given, on each separate proxy I wrote in the margin A for accept, or R for reject, and it may be that I only voted on No. 1.

Q. You cannot say you voted 4 and 5 in the way you have answered?

A. I cannot say.

Q. You are in no doubt as to the votes which you yourself cast, are you?

A. I am in doubt as to votes on Nos. 2, 3, 4, and 5.

LLOYD P. SMITH.

Adjourned to December 1st, 1871, at one o'clock.

Second Meeting, Dec. 1, 1871.

Present—Messrs. RAWLE, JUNKIN, JOHNSON, and EXAMINER.

LLOYD P. SMITH, re-examined.

After reading the notes of my testimony at the last sitting, and comparing them with my papers, I desire to amend the evidence given at the close.

On the day of the election I had about 240 proxies in my possession, given with the understanding that I should vote them as I pleased, or as I should be instructed by the Directors. These 240 proxies were not voted on at all.

I had also about 27 proxies, given with special instructions to vote either for acceptance or rejection—all but two

or three in favor of acceptance. About 20 of the members who had given these proxies appeared in person, or by new proxies to third parties, so that there were some six or seven of those respecting which I had instructions, which, just before the closing of the poll, had not been voted on at all. As these members, two of whom were in California, were evidently depending on me to cast their votes, I polled them as follows:—

On the first Resolution all Aye.
" second " " Aye.
" third " " No.
" fourth " " Aye.
" fifth " " No.

The next morning, on examining my proxies, I found I had overlooked the private mark on one of them (that of Mrs. Gill), and had voted it *Aye* instead of *No*, on the first Resolution. This error made the apparent majority on the first Resolution five, instead of three, as it ought to have been.

LLOYD P. SMITH.

Affirmed and subscribed before me,
RICHARD S. HUNTER, *Examiner*.

HENRY WHARTON, affirmed.

Q. Are you one of the Directors of the Philadelphia Library, and how long have you been so?

A. I am, and have been so since the year 1862.

Q. Please state to the Examiner any conversation at which Mr. Williams was present with respect to the selection of a lot whereon to erect a building for a fire-proof library.

A. I did have such a conversation with Mr. Williams, and in order to explain what the conversation was, it will be necessary for me to state what had occurred previous to that conversation. We had been for a long time desirous to erect a new and fire-proof building for the Library Com-

pany, and for that purpose funds had been raised by subscription, and a legacy and also a residuary bequest had been made by Mr. Joseph Fisher to us. In April, 1869, there being an apprehension that before long no available lots of ground could be obtained in a convenient position for the erection of the library, a Committee was appointed for the purpose of selecting a lot. It consisted of Mr. Williams, Mr. Alexander Biddle, and myself. This was on the 24th of April, 1869. The Committee was appointed to make inquiries as to the purchase of a lot. They reported at the next meeting, April 29, a Resolution to be submitted to the Stockholders. At the meeting of the Stockholders on May 3rd, the authority was obtained, by a resolution which has been given in evidence by Mr. Smith. On the same day on which the meeting of the stockholders was held, there was a meeting of the Directors at which the same Committee on the lot was continued. After that, Mr. Williams, Mr. Biddle, and myself made inquiries as to lots of ground in different situations. Mr. Williams was very active in the matter. I, also, having the opportunity to see conveyancers and real estate brokers often, made inquiries myself. Among other lots looked at was one at the corner of Juniper and Locust Streets, on the northwest corner, which has since been bought by the Library Company. Mr. Gummey was the agent for sale. Soon after this Mr. Gummey said that the owners were pressing for an immediate answer. I saw Mr. Biddle on the subject at once.

Q. Why did you not communicate with Mr. Williams also?

A. He was out of town on that day. I asked Mr. Biddle if Mr. Williams was satisfied with the purchase of the lot, and he said he thought that he was. I then went to Mr. Gummey and said that, subject to Mr. Williams' approval, we would purchase the lot. The next morning Mr. Biddle met me, or came to see me, and said that Mr. Williams had objected to the lot. I was annoyed at this, and got Mr.

Biddle to go over with me and explain the matter to Mr. Gummey. Two or three days after that, Mr. Williams called with Mr. Biddle at my office, then in Walnut Street below Sixth, and told me that there was a lot at the corner of Broad and Christian Streets that would answer the purposes of the Library. I don't remember that he told me the dimensions or the price. I said I did not believe the stockholders would consent to move the Library to that situation. He then, after some hesitation, said that he was going to communicate to me in confidence a matter affecting the Library, which was that Dr. Rush had devised by his will to the Library Company a lot of ground upon which they should build their fire-proof building. That he now desired to make the purchase in his lifetime, and had bought for this purpose this lot at Broad and Christian Streets—before this time I had learned from Mr. Williams that Dr. Rush was exceedingly ill. Mr. Williams then went on to say that this lot had not been selected by himself, but had been brought to Dr. Rush's attention by Mr. Craven. Up to this time I had never heard of any intention of Dr. Rush to give anything to the Library. I certainly never imagined that while we were looking out for lots of ground, we were doing it on Dr. Rush's behalf. I still expressed my doubts as to the stockholders being willing to move to Broad and Christian Streets. Then Mr. Williams said to me in substance that if the Library Company would accept this lot upon which Dr. Rush had set his heart, he intended to endow the Company with the bulk of his fortune. I did not then know what Dr. Rush's fortune was. It was generally estimated at more than a million of dollars. I understood the endowment to be intended for the purchase of books. I did not understand that it was meant for the erection of a fire-proof building. We had been speaking of a lot for the Library, for building on which they had special funds of their own. No reference was made by Mr. Williams when he was speaking, to any such purpose of the endowment.

(Mr. Junkin objects to the foregoing as not being testi-

mony, but the opinion of the witness, an impression, and not a statement of what was said by himself and Mr. Williams upon the subject of the Library, and he objects to the continuance of the witness in this manner.)

Mr. Williams then asked me if under these circumstances I did not think that the Library Company ought to accept this lot and put their building there. He said Dr. Rush had desired to get the opinion of the Directors on this point. As it was not then possible to do so, he had asked him to consult Mr. Biddle and myself, who were the other members of the Committee on the purchase of the lot. I told him I did not think the Committee had power to bind the board in the matter, but that I personally thought the Directors ought to advise the stockholders to accept this gift, rather than that such a munificent gift should be lost to the city of Philadelphia. This is, as near as I can recollect, what passed.

Q. When you said that, was it with the idea that the endowment you spoke of was for the purchase of books?

(Mr. Junkin objects both to the form and substance of this question.)

A. That was the impression made upon my mind by what Mr. Williams said. None of the conditions that were subsequently found in the codicils were mentioned to me at the time. The conversation was a short one, and I believe both of us were standing up. Mr. Williams asked me if he might mention this to Dr. Rush. I said certainly. I thought that Mr. Williams, in speaking of Dr. Rush's proposed endowment of the Library, referred to something to be done by a codicil to his will. I am the more clear about this because I remember that at that time Dr. Rush was in his last illness, and that I thought that if he had such an intention, he probably could not live long enough to carry it into effect under our statute of 1855, by which bequests made within a calendar month of the testator's death for charitable purposes are void.

Q. What were the next interviews you had with Mr. Williams?

A. After that there were two or three interviews, but I don't remember anything of them, except my recollection of another statement by him after this conversation, that he had applied since the purchase of this lot to Mr. Thomson, President of the Pennsylvania Railroad Company, with reference to the purchase of their depot on Market Street below Broad, but he had given up the idea on account of the price of the lot, which I think he said was $250,000. I am very certain that this was after Mr. Williams' statement of the former purchase, and either just before Dr. Rush's death, or it may have been very shortly after. It left upon my mind the impression that the purchase of the lot on Broad and Christian Streets was not then a final one.

Q. Was the conversation you have referred to as taking place between Mr. Williams, Mr. Biddle, and yourself the first information you ever had of any plan on the part of Dr. Rush to give the Library a building lot, or to endow it with any part of his fortune?

A. It was.

Q. Refer to page 5 of Mr. Williams' Answer, in which this sentence occurs: "The contract was signed on the eighteenth day of May, 1869, and the title papers were directed to be sent immediately to Mr. Henry Wharton for his opinion thereon;" and please state your recollection as to what took place.

A. I don't know whether or not Mr. Williams directed the deeds to be sent to me immediately. All I know is that about the time of the conversation, Mr. James H. Castle sent me a bundle of papers, which afterwards proved to be the title papers to the lot in question. Whether this was before or after the conversation I cannot say; but I can say that as Dr. Rush for several years before had from time to time sent me papers for examination, there would be nothing peculiar in that to strike my attention. I know that nothing at the time was said to me by Mr. Castle on the subject of the lot being for the Library.

Q. Did you examine the title papers?

A. I did.

Q. Had you any conversation with Mr. Williams on the subject?

A. I had conversations with him, and I gave an opinion on the subject. The conversations were partly as to the title, and partly as to the contract under which the property was purchased. That was after Dr. Rush's death. I think I did not examine the papers till after his death. The contract was what is called a unilateral one. It was signed by the vendor, but not by the vendee, or by any one for him. I told Mr. Williams that I did not think the contract was binding on him, and that the executor could not carry it out without the consent of the residuary legatees. He said that made no difference, he would then select the lot by virtue of the power of selection given him by the will. The opinion I gave was adverse to the title in this respect, viz.: that though a good paper title was shown to Mrs. Helmuth, who had died seized of the lot, yet as she had died within then five years past, it was subject to the lien of her debts. That it was not such a title as an executor or trustee ought to take; that Mrs. Helmuth's executors had settled no account, and there was of course some risk, the amount of which I could not measure. That was the last professional connection I had with the matter. I sent my opinion to Mr. Williams.

(Mr. Rawle here calls for the production of Mr. Wharton's opinion of June 10th, 1869.)

Q. Please state whether Mr. Williams was present at the meeting of the Directors on the 3d of June, 1869, and if so, what took place.

A. He was present and laid a copy of the will on the table. He made some statements in reference to the property and to the other matters connected with it. He desired that the Library Company should take immediate action in accepting the bequest. He said that they had a right to do so at once. Among other reasons assigned why we should act at once was, that there was a good deal of

furniture at Dr. Rush's house on Chestnut Street, which might be useful in the Library building. He would like the Directors to indicate which of these articles it would be well to retain. He also mentioned the fact there were some verbal bequests to relations of Dr. Rush, of articles of wearing apparel or jewelry, I think. He mentioned also that these had been given by unsigned memoranda. I am positive that there was no request to the Directors to take action in regard to that matter. The matter was passed over *sub silentio*. I don't think it was ever referred to again, either by Mr. Williams or by anybody on his behalf, until his letter of December 30th, 1870. Certainly no request on the subject was made to myself as a member of the Board or to any other person, to my knowledge. The Board passed a resolution on the receipt of this letter, which is among the minutes given in evidence, directing the Secretary, Mr. Whitman, to write to Mr. Williams to the effect that there had been a mistake on his part, in supposing that he had ever before requested the Board to take any action in the matter, and offering to take immediate action on the subject.

Q. Referring to the minutes, please state what is the date of that meeting.

A. January 5th, 1871.

(Mr. Rawle calls for the production of the letter of January 11th, 1871, from Mr. Whitman, and gives in evidence Mr. Williams' answer thereto, dated January 16th.)

Q. Do you find in the minutes a copy of the letter by Mr. Whitman to Mr. Williams?

A. I find in the minutes a copy of a letter dated January 12th, 1871, to Mr. Williams, and another from him dated January 16th, 1871, in reply.

Q. Is either of these letters mentioned in Mr. Williams' answer filed in this cause?

A. Neither.

Q. Please state any subsequent action between the directors and Mr. Williams for the purpose of removing any

doubts which had arisen as to the construction of Dr. Rush's will.

A. The first meeting of the Directors after Dr. Rush's death was that at which Mr. Williams produced the will of Dr. Rush. It had, I think, been printed in the newspapers, and many of its provisions were of difficult construction. The matter was referred to a committee, consisting of Judge Hare, Mr. McCall and myself, by the Board of Directors. We gave the matter the most attentive consideration, but had so much difficulty in arriving at a satisfactory conclusion that we advised the reference of the matter to counsel for an opinion, which was done. That opinion is on the minutes. It was to the effect that we were not called upon to elect at that time, and they advised us against such election. The opinion is copied in the minutes of January 4th, 1871. Sometime after this, I spoke to Mr. Biddle on the subject, and asked him whether he would see Mr. Williams as to whether the questions involved could not be settled by an amicable suit to be instituted against him so that the Directors could act intelligently. Mr. Biddle reported that Mr. Williams declined to take any step in the matter.

(Mr. Rawle calls for the production of the opinion of counsel to Mr. Williams, referred to on page six of the Answer.)

A. I never heard of any such opinion as that stated in the Answer on page 6.

(Mr. Rawle calls for the opinion given by Judge Strong on the 9th of June, 1869.)

Q. Please state what resolution it was proposed should be voted for at the meeting of the stockholders on the 29th of June.

A. A resolution in these words:—

"That the Directors be and are hereby authorized to accept the bequest and endowment contained in the will of the late Dr. Rush, if and when they shall deem it advisable, and to secure any legislation necessary for the purpose."

Q. What arrangement was made by the Directors as to

the vote upon such resolution, and upon such proxies as were under their control?

A. I think that the Librarian was directed to vote them in favor of the resolution just stated. I am certain that it was so.

Q. Was that resolution voted for at the meeting on the 29th of June?

A. I was not present, but from the minutes it appears that other resolutions were adopted.

(Mr. Johnson objects to any statements as to what took place in a meeting at which the witness was not present.)

Q. Please state how you voted at the meeting of the stockholders on the 19th of October, 1869, as to any proxies which were under your control.

A. I voted in favor of all the resolutions.

Q. Were there no other resolutions voted for but these?

A. There were no other resolutions voted for. There was but one voting ticket.

Q. What was the effect of that vote?

A. The result was a vote of acceptance, by a majority apparently of five. So the tellers reported the next day. But there was a very strong dissent as to the correctness of that report, from the fact that several of the votes alleged to have been cast in favor of the first resolution had been, it was stated, improperly cast. Some of the members spoke of contesting the matter, either upon the report of the tellers, or, if necessary, in Court.

Q. Please state what action was taken as to the passage of the Act of Assembly of 23d February, 1870.

A. At the adjourned meeting of stockholders, the next day after the voting, the tellers presented their report, which was never formally acted upon, though its result was announced by the Chairman. A resolution was adopted, which I recollect was a sort of compromise:—

"*Resolved*, That the further consideration of the bequest of Dr. Rush be postponed, and a Committee of five members and Directors be appointed to take it into consideration and

report to the members such action as they deem to be necessary."

The members composing that Committee represented the opposing parties among the stockholders. I was a member of that Committee. We had several meetings, and the result was that an Act of Assembly was prepared to enable the Library Company to accept the provisions of Dr. Rush's will, which, of course, they could not do of themselves, as it required an alteration of the charter, which could not be done without the authority of the Legislature and Court. The act was submitted, however, before it was finally reported to the members, to Judge Strong and Mr. Judson, who were then acting as counsel for Mr. Williams, for their consideration. It was returned with a letter to Mr. McMurtrie signed by Judge Strong and Mr. Judson. The chief reason for submitting this proposed act to the counsel of Mr. Williams, was that by the terms of Dr. Rush's will certain provisions were directed to be inserted in the charter of the Company, some peremptorily, others at the discretion of his executor. The Committee desired to know whether any other conditions were to be inserted in the Act of Assembly than those which the act contained, which, it was believed, were all that were imperative. There was never any expression of dissent made to the Committee or the Board as to the terms of that Act of Assembly, until the filing of the Answer in the cause.

(The letter referred to, dated January 4, 1870, from Wm. F. Judson, Esq., and Judge Strong to Mr. McMurtrie, offered in evidence.)

Q. Referring to the foot of page eleven of the answer of Mr. Williams, in which he says:—

"Although the complainants do not deny that I have desired and intended to carry out the wishes of the testator, yet I have been met with dictation and resistance, direct and indirect, and a constant struggle to obtain the control of his estate."

Please state your knowledge and recollection on that subject.

A. As far as I know, there never was at any time any attempt to dictate to or resist Mr. Williams, but always, among the Directors, a wish to conciliate him. I never heard or knew of any desire or attempt on the part of anybody to obtain control of Dr. Rush's estate. I never heard, at any meeting of the Directors, of the members, or of any Committee of either, any objection to Mr. Williams' course, or proposed course, except on the single ground of the choice of the lot. In every other respect, I know that the Directors were anxious that Mr. Williams should act according to his own judgment and the wishes of Dr. Rush.

Q. Referring to page 26 of Mr. Williams' Answer, in which he says, "By their acceptance on the twenty-fifth of May, 1870, of the said Act of Assembly, the complainants distinctly elected, as they allege, 'not to allow their collection of books to be removed to the building to be erected by the defendant, if placed on the proposed site,' and this election, so far as appears from the averments in the bill, was made in the belief that I was acting in strict accordance with the directions of the will, for they aver no knowledge until the receipt of my letter of the 30th December, 1870, of my having made any (supposed to be) disqualifying promise;" please state your knowledge and recollection as to this.

A. Mr. Williams, from the beginning, stated that he had promised Dr. Rush to put the building on this lot; but the first time that he ever stated that he considered the promise as binding as an oath was in his letter of December 30, 1870.

Q. Please state whether he mentioned his promise to Dr. Rush at the first meeting of the Directors.

A. I think he did; he certainly did at the second.

Q. Did he mention it at the meeting of the stockholders on the 29th of June?

A. I was not present.

Q. Do you remember any statement being made by Mr. Williams, at the last meeting of the Directors at which he

was present, as to his wish that the Directors would or could not accept of Dr. Rush's bequest?

A. At the last meeting at which Mr. Williams was present, he was very much irritated by the unwillingness of the Directors to advise an immediate acceptance of the bequest of Dr. Rush, without legal advice as to the construction of his will, and he expressed himself somewhat to the effect (I may be wrong as to the exact words) that he would not care if the members rejected the bequest. I do not mean that this was a formal statement to the Board, but as occurring in the general discussion. He subsequently, in a letter of June 22, 1869, to Dr. Morris used these words:—

"I address this note to you as the oldest of the Directors of the Library, because I do not intend to be present at your meeting on Thursday next, nor to take any part in inducing the decision which they are then to make in reference to Dr. Rush's magnificent gift. Indeed, the coolness and, I may say, indifference, with which it has been received, almost lead me to hope that it may be rejected, and the Ridgway Library be established wholly independent of the Philadelphia Library."

December 8, 1871.

Q. You have already testified to the meeting of Directors of the 10th June, 1869, at which Mr. Williams was present. Please state, as far as you can recollect, all the statements there made by him as to any promise which he had made to Dr. Rush.

A. Mr. Williams stated the fact of the promise which he had made to Dr. Rush in such a manner that it became a matter of consideration by the Committee appointed to consider the question at that meeting, (composed of Judge Hare, Mr. McCall, and myself,) whether Mr. Williams had not thereby disqualified himself from acting under the power of selec-

tion given by the will, and to this subject a part of the report was directed, which report was read in the presence of Mr. Williams at the next meeting.

(Objected to as embodying an inference and expression of opinion of the witness drawn from conversations, and not being a statement of words or their substance. Also as not being responsive to the question.)

Q. Please state what Mr. Williams said as to any such promise.

A. The substance of what he said was (I cannot give the exact words), that he considered himself bound by his promise to the testator to put the Library building upon the lot at Broad and Christian Streets.

Q. Did any, and what, discussion then or subsequently, and when, take place in his presence as to the legal effect of such a promise?

A. There were doubts expressed as to whether the effect of such a promise, if binding, made within a calendar month of Dr. Rush's death, would not be invalid, and perhaps affect the whole bequest considered as a charitable one, so as to let in the next of kin of the testator. This, I know, was in Mr. Williams' hearing, or under such circumstances that he must have heard. There was no formal expression of opinion on the subject by any member of the Board, but I distinctly remember it was one of the points on which the opinion of counsel was desired. This was all at the first or second meeting at which Mr. Williams was present, and in particular the expressions of doubt as to the validity of the promise and its effect, were at the second meeting.

Q. Was anything said as to whether this promise had disqualified him from selecting this site himself?

A. A doubt was expressed on that point, and it was also a subject discussed with counsel. I do not positively recollect that it was discussed with Mr. Williams.

Q. You have already referred to the purchase by the complainants of the lot at the corner of Juniper and Locust

Streets; please state the purposes for which that lot was so bought.

A. The lot was bought principally as a temporary investment of the Building Fund, at least until the status of the Library Company with regard to the bequest of Dr. Rush should be determined. It was thought by all the Directors an eligible situation for the Library, in case it should fail ultimately to accept or be entitled to that bequest; or, if accepting, and becoming entitled to the benefit of that bequest, and being also authorized under that bequest to retain the whole or part of their own collection of books, in a different location from the principal one, it was also an eligible location for that purpose. Lots of that dimension were becoming very scarce in that vicinity, and it was feared that this one might be lost by delay. In point of fact, Mr. Rice had sold it to the Academy of Fine Arts, but they not coming up to the time agreed, we took it off his hands. There never was any immediate intention of building on the lot, nor is there now.

(Mr. Junkin objects to the question and answer, because the purpose can only properly be shown by the recorded action of the corporation plaintiff, and not by the individual opinion of a stockholder or director, and because the latter part of the answer is irresponsive to the question, and volunteered.)

Cross-examined.

Q. Mr. Wharton, will you state the words, or the substance of the words (without inference) uttered by Mr. Williams and yourself at the interview at which he announced Dr. Rush's testamentary dispositions in favor of the Library Company, and, if possible, chronologically?

A. After this lapse of time, it is impossible for me to recollect the exact words used. I have given the substance as nearly as I could at the time in my direct examination, and will now repeat the same if desired.

Q. It is so desired.

A. Mr. Williams came into my office with Mr. Biddle, on some day in May, 1869 (I do not remember the exact day), and said that there was a lot at the corner of Broad and Christian Streets suitable for the purposes of the Library. I said that I did not think that the stockholders would consent to move the library building to that location. He then, after a moment's hesitation, told me that Dr. Rush had intended—long intended, I think he said—to give to the Library a lot of ground for the purposes of their fire-proof building, and I think he said either that such a lot was given, or was authorized to be purchased by his will. Wishing to avoid inference, I state this doubtfully, because I may have confused the event with the previous statement, but my recollection is that Mr. Williams said that Dr. Rush had desired to make this purchase of the lot in his lifetime, or before his death, and it had been so purchased, or agreed to be purchased. I still intimated, in words which I cannot recall, my opinion that the stockholders would not be willing to go down to Broad and Christian Streets. Mr. Williams then told me that Dr. Rush, if the Library Company would accept this lot, would endow it with the bulk of his fortune—that he had set his heart on this lot. I am as nearly certain of anything as I can be after such a lapse of time, that Mr. Williams spoke of Dr. Rush's intention to make this endowment, in prospective words. Such I know was my understanding at the time. I may have mistaken Mr. Williams' words, but that was my understanding of them, and upon that, it is my distinct recollection, that in what was subsequently said by me, I acted. Mr. Williams then asked me whether in my opinion the Directors ought not to recommend the stockholders to accept the gift of the lot under such circumstances. I do not recollect that Mr. Williams mentioned any conditions or qualifications about the endowment; indeed I am sure he did not. I then said that I did not think that we, as a Committee of the Board, could bind the Board, but that it was my individual opinion under those circumstances that the stockholders ought to accept rather

than the city of Philadelphia should lose so munificent a gift. Mr. Williams then said that Dr. Rush had desired to get the opinion of the Directors on the point, but as that could not then be done, he requested him to speak to the other members of the Committee on Building, which I have before stated consisted of Mr. Williams, Mr. Biddle, and myself. As you have desired I shall give no inference on the subject, I give what passed thus nakedly, without filling up the connecting links, which at present to me are but inferences, but which I believe to be true.

Q. The above, so far as your recollection now serves, is the substance of that conversation?

A. It is the substance of that conversation as far as I can now recall phrases or substantial statements, omitting inferences drawn from previous conversations had with Mr. Williams as a member of the Building Committee of the Library, and the general tenor of the conversation, which I believe I have given correctly in my examination in chief.

Fifth Meeting, December 15, 1871.

Present—Messrs. Junkin, Johnson, Rawle, and Examiner.

Mr. Wharton's cross-examination continued.

Q. In that conversation with Mr. Williams was the word *books* used?

A. I do not think it was. As far as I can recollect, it was not.

Q. Are you certain the word *endow* was used?

A. I think it was, but I cannot be positive as to any single word. It was either that word or some word which produced an equivalent effect on my mind.

Q. Did he say anything about a building?

A. I do not think he did, except incidentally.

Q. Did he say that the lot had been already purchased?

A. I think I understood him to say that the lot had been bought.

Q. How many subsequent conversations did you have with him prior to the death of Dr. Rush?

A. I cannot say; two or three.

Q. Were they at accidental meetings?

A. They were not accidental meetings; meaning by that, meetings in the street. They were meetings, I presume, designed, but I cannot recollect the specific purpose. I may have gone to Mr. Williams' office, or he to mine, but without any specific appointment.

Q. For what purpose?

A. I cannot say, except that they were for the general purpose of consultation concerning the purchase of the lot, or for some such purpose.

Q. Are you certain that Mr. Williams ever stated to you that he had any negotiation, directly or indirectly, about the Pennsylvania Railroad lot, after his conversation with you on which he announced Dr. Rush's testamentary intention?

A. I think I am certain.

Q. You cannot recall where such a statement was made by him?

A. I think at my office, but I am not sure.

Q. Can you fix the date of your call upon Mr. Gummey, on behalf of the Committee for Purchase, agreeing to take the Locust Street lot?

A. I cannot.

Q. Can you approximate it, and if so, how nearly?

A. Within a day or two. It was between the date of the meeting of Stockholders, at which authority was given to purchase the lot, and the date of this conversation to which I have referred, announcing the testamentary disposition of Dr. Rush.

Q. Between what dates was this last testamentary conversation held?

A. Between Dr. Rush's death and the date of the meeting of stockholders, to which I have referred—between the 3d and the 26th of May.

Q. Did Mr. Williams ever say to you that, as a member of the Committee for Purchase, he desired that lot on Juniper Street to be bought?

A. I cannot say that he did so, in so many words. I believed at the time, from what was said by Mr. Williams that he had agreed the purchase should be made.

(So much of the answer as refers to belief without testimony of words or their substance, upon which it is grounded, being given, is objected to.)

Q. Please give the words or the substance of the words spoken by Mr. Williams, from which you derive such belief.

A. I cannot, but make my present statement from a distinct recollection of the impression produced upon my mind by Mr. Williams' words at the time, though I do not recollect the words.

(Objected to as not being responsive.)

Q. State what efforts were made by Mr. Williams as a member of that Committee to purchase lots.

A. I know of none except from his own statements on the subject, and personal visits with him to one or two lots.

Q. Where were those lots situated?

A. One was at the corner of Broad and Locust Streets, another was at the corner of Locust and Juniper. I think we looked together at General Patterson's lot, in a general way.

Q. Were either of the first two lots one hundred and fifty feet square?

A. Neither of the two first lots was 150 feet square in one sense of the word. The second lot had an area of more than 150 square feet I think.

Q. Were more than two of the sides of that lot 150 feet in length?

A. No.

Q. Was any price named for the Patterson lot?

A. I don't recollect. There was, for the lot at Broad and Locust.

Q. Will you give the dimensions and price of that lot?

A. I can give the price, I cannot give the dimensions: it was $1000 a foot on Broad Street.

Q. Was there any other lot visited by yourself or inquired about by you for the purpose of ascertaining price and suitability whilst you acted as a member of that Committee?

A. Yes, quite a number. I went to Mr. Muirheid, Mr. Gummey, Mr. McCay, and I believe one or two more real estate agents, to ask about lots, and examined their books. I do not remember any one lot being especially thought of besides those named by me, except one at Broad and Race Streets, of which I saw a plan, but did not visit personally. Mr. Williams, however, told me that he had visited it, but was dissatisfied with it.

Q. Do you recall any lot which, in your opinion, was suitable to the purposes of the Library? If so, please state, if you can, its dimensions, price, and location.

A. I cannot remember now the lots particularly, their dimensions or location, except Mr. Dundas's property was spoken of at Broad and Walnut Streets. The Pennsylvania Railroad depot was spoken of. I think they wanted 250,000 or 300,000 dollars. There were some other suitable locations, but these were all set aside on account of their excessive price for the means of the Library. I wish here to state that the reference of counsel to a lot 150 feet square recalls to my mind that Mr. Williams, either at the testamentary conversation, or subsequently and before Dr. Rush's death, stated that the reason why Dr. Rush did not choose the lot at the corner of Broad and Locust Streets was that it was not 150 feet square, but did not explain why he desired those special dimensions. I understood afterwards when I read the will, but thought he had mistaken its construction.

Q. Do you remember who told you that the Pennsylvania Railroad lot could be bought for from $250,000 to $300,000?

A. My impression is Mr. Williams did.

Q. You have no remembrance of deriving information as to price from any other source?

A. I cannot fix it at all.

Q. Are you certain that the figures Mr. Williams named were not from $300,000 to $350,000?

A. I am not certain. It was a very large sum, I thought, for the property. I remember it excited no surprise in my mind that Mr. Williams or Dr. Rush would not give the price.

Q. You are an active Director of the Library Company?

A. I have been, and am.

Q. You have given the matter of location of the new Library building great thought for years?

A. Yes, for several years; for a year or more before authority was given to the Directors to purchase the lot.

Q. Will you now name one or more lots having more than two of their sides 150 feet long, which in your opinion would be suitable as a site for the erection of that building?

A. I cannot, as the subject has been dismissed from my mind, as one of inquiry, for a considerable time.

Q. Immediately after Mr. Williams had heard what had been said to Mr. Gummey concerning the purchase of the Locust Street lot, did he not express his decided dissent?

A. I do not know. I think that Mr. Alexander Biddle told me of his dissent. It was given the next morning.

Q. After Mr. Williams informed you of the purchase of the Broad and Christian Street lot, did he join you in any efforts to procure another lot?

A. I think he did not.

Q. As a Director of the Library Company and a lawyer, you have given the subject of the acceptance by the Company of Dr. Rush's testamentary wishes considerable thought?

A. I have.

Q. Have they ever accepted such bequest in such manner that they may not at their pleasure at any time refuse to take?

A. As that is a question of law, arising from facts, I presume I am not bound to answer it. But in my individual

opinion, they have so accepted it, if one construction of Dr Rush's will is correct.

Q. The construction you have put upon it, you refer to?

A. I have not referred to any construction in particular. From the beginning, and as soon as Dr. Rush's will could be intelligently read, two questions of a serious character to the interests of the Library arose upon its construction. One was, whether the whole of Dr. Rush's residuary estate, after setting apart a sufficient part for the annuities and legacies, and for the publication of his books, was to be spent in the erection of a fire-proof building. If so, there would be no immediate adequate fund for the maintenance of the institution. The other was, whether the whole collection of the Library, assuming the building to be built at the corner of Broad and Christian Streets, would have to be removed there, or whether a portion of it could be retained at its present location, or in some one more convenient for ordinary use by the stockholders. The Directors were very anxious to have these questions settled as soon as possible, but have not yet been able to have it done authoritatively. I myself was in hopes that an arrangement could be made by which a portion of the books which belonged to it in its character as a circulating library could be so retained, but had doubts whether it was authorized by the will. Others thought differently.

Q. What was the date of the purchase of the Juniper Street lot?

A. It was bought in two parcels, and I cannot fix the date of the purchase of either. One was bought from John Rice.

Q. Those lots were purchased with what fund?

A. The Building Fund.

Q. And cost how much?

A. About seventy thousand dollars, altogether.

Q. The Building Fund amounted to about how much?

A. About $90,000.

Q. Of this fund how much came from Joseph Fisher's estate?

A. In rough, about two-thirds.

Q. These lots were purchased partly with the funds of that estate, and in pursuance of the directions of Joseph Fisher's will, and for the purposes mentioned in his will, were they not?

A. They were purchased with funds, part of which were the proceeds of Joseph Fisher's legacy, but they were not purchased in pursuance of the directions of that will, nor for the purposes mentioned in his will, at the present time.

Q. Were they purchased with any intention or expectation of ultimately building thereon a library building?

A. I can only speak positively as to my own expectation and intention, but I believe I can speak also of the expectation and intention of the other Directors. So answering, I say that they were not purchased with any immediate expectation or intention of building. It was thought by myself and others that if the ultimate result of the situation in which the Library then was, was its failure or refusal to accept the gift of Dr. Rush, this would be a very suitable location for a fire-proof building. On the other hand, if it should appear that the true construction of Dr. Rush's will was that a separate establishment for the circulating department of the Library could be kept up, under the provisions of Dr. Rush's will, this would be equally a suitable place for the books. And, finally, the value of property was rising in that neighborhood, and we should probably make something on the investment in any event.

Q. Do you know how the prices of lots in Locust Street, between Juniper and Thirteenth, sold in 1869, compared with subsequent prices?

A. I do not know that any have been sold since then. I know that the Academy of Fine Arts were very anxious to purchase the lot at that time for the same price, and very much disappointed that they did not get it.

Q. Do you know how the prices of lots in that square in 1866–7–8, compared with the prices in 1869?

A. I do not.

Q. You have spoken of statements by Mr. Williams, as to a promise by him to build a library building upon the Broad and Christian Street lot. Have you not heard him frequently state his belief that that lot, in his opinion, was the best site for the Library building?

A. No, I cannot say that I have. The matter was spoken of at two meetings of the Directors, at which Mr. Williams said (and I remember being struck with the expression at the time), that, under the circumstances, he thought it was the best site. I don't think he varied from that expression. I think, in conversations with myself, about the time of Dr. Rush's death, he spoke of certain plans which Dr. Rush had left—rough plans—and of conversations had with him and directions received from him, in respect to the building, which would require, if properly carried out, a very large lot of ground. But I have no recollection that Mr. Williams ever said to me or in my presence, that, in his absolute opinion, this was the best lot for the purpose. I could not tell whether, in the use of the words "under the circumstances," he meant to include his promise to Dr. Rush, and the expressed wishes of Dr. Rush, or solely the dimensions of the lot with reference to Dr. Rush's building plans. I think he said under *all* the circumstances.

Q. Did he not particularize some of the advantages which that lot possessed?

A. He may have done so, but I do not remember them, other than its dimensions.

Q. Did you ever hear him express any doubt as to that lot being the best site?

A. I don't think I have.

Q. When he said, "under all the circumstances," was it in immediate connection with any statement as to his promise to Dr. Rush?

A. It was in a conversation in which the subject of that promise had been discussed.

Q. Was it not in immediate connection with a discussion as to the suitability of the lot as a site?

A. I think it was, but not so disjoined from the other as to have no connection with it.

(Objected to as being volunteered and not responsive.)

Q. Your attention has been called to the third section of the twenty-sixth paragraph of the Answer, on page 26. Is there any averment in the Bill of a knowledge by the Library Company, or any of its Directors, of any promise made to Dr. Rush?

(Objected to by Mr. Rawle, as the Bill will speak for itself. Question withdrawn.)

Q. In your answer, after having had this section called to your attention, did you intend to assert that there was any such averment?

A. I did not, as I had then no recollection and have now no recollection as to whether there is or is not such an averment in the Bill.

Q. Did Mr. Williams, at any meeting of the Board of Directors, alluding to certain parol gifts of Dr. Rush's, say, after explaining their nature, that as no one could object to them but the Library Company, if they gave their assent, however informally, he would take their pecuniary responsibility and execute the instructions?

A. I do not remember his putting it in that way, for if the Library Company assented, I do not see that there would be any pecuniary responsibility. I do not think that he said anything that required any action by the Directors at that time or at any time afterwards.

(Objected to, as not responsive.)

Q. Do you remember the substance of the words he did use? If so, please give them.

A. The substance of what he said was an incidental mention of these gifts, and that he was desirous of carrying them into effect, to which I heard no objection.

Q. Was there a word of response?

A. The statement was made as a part of the general con-

versation which then took place, in which he was urging upon the Directors immediate acceptance of Dr. Rush's bequest, and I recollect no words or substance of words used by him which required any response.

(Objected to as irresponsive.)

I wish to add this: In the sense in which you are using the word *response* in your question, I cannot answer that question otherwise. There was nothing said on that subject that I remember.

Q. You examined the agreement for the purchase of the Broad and Christian Street lot as counsel in that matter for the estate?

A. I cannot say that I did.

Q. You examined it in connection with the title papers which were so submitted to you?

A. I did.

Q. It appeared therein that $1000 had been paid on account of the purchase?

A. Yes.

Q. And the estate would have been liable in damages for a breach of the contract?

A. It would. All of which damages I believe the residuary legatees would have paid rather than take the lot.

December 22, 1871.

Mr. Wharton re-examined.

Q. You have testified to an interview between yourself and Mr. Williams in the month of May, 1869, at which the latter mentioned to you that Dr. Rush intended to endow the Library Company with the bulk of his fortune, and that you understood that such endowment was intended for the purchase of books. Please state what were the grounds of such a conclusion on your part.

(Objected to because the witness can only testify as to facts, and not as to deductions or inferences of his own from facts.)

A. Mr. Williams told me in that interview that Dr. Rush had bought a lot of ground for the purpose of erecting a library building thereon. The Library Company had a building fund which, added to the value of its own real estate and building, would be adequate, or nearly so, to the erection of a fire-proof building, and there was no other purpose to which I could suppose so large an endowment could reasonably be applied than to the purchase of books. I may add that it had frequently been an occasion of regret to the Directors that the funds of the Library were so insufficient for the purchase of books.

(Answer objected to as not being in any sense testimony, but simply inference and argument.)

Re-cross-examined.

Q. You thought all that at that time?

A. I did implicitly, though perhaps not in the formal way in which I have stated it above.

HENRY WHARTON.

Affirmed and subscribed before me,

RICHARD S. HUNTER, *Examiner.*

Third Meeting, December 7, 1871.

Present—Messrs. MCMURTRIE, RAWLE, JUNKIN, JOHNSON, and EXAMINER.

WILLIAM E. WHITMAN, sworn.

Q. Are you Secretary of the Library Company of Philadelphia?

A. I am.

Q. How long have you been so?

A. Fifteen or twenty years.

(Plaintiffs call on defendant for all letters sent to the defendant, Mr. Williams, from the Library Company, its officers, or agents.)

Q. Have you copies of the letters written to Mr. Williams on behalf of the Library Company?

A. Those letters which have been written have been copied in the minutes, and I have them.

Q. Are the copies in the book in your handwriting?

A. I presume they are; I have not examined the book. (The book was here handed to witness.) They are in this book; I see them.

Q. Please state the dates of the letters, and the page of the book on which the copies can be found.

A. The twelfth of January, 1871; I see my signature to it, and I recognize the letter, as being a copy of one which I wrote.

Q. Just give the date, and page of the book.

A. I have the date, January 12, 1871; Minute-Book, page 373 and 374. There was another letter written by direction of the stockholders. This letter was written by direction of the Board by me.

Q. See if you do not find a letter in reference to Mr. Williams' resignation, inclosing a resolution of the Board requesting him not to resign.

A. There was such a letter.

Q. Have you found it?

A. No, I don't find it here.

Q. Has the Board of Directors of the Library Company a book called the Book of Minutes?

A. Yes, sir, this is its Book of Minutes. There is a book of rough minutes which this is written from. This is a copy from the rough minutes, and this is a copy which was read at every meeting. I regard it as the book of minutes of the Library Company.

Q. Who was the amanuensis who wrote up what purports to be the minutes of that book during the time that elapsed after Dr. Rush's death up to the time this bill was filed?

A. Mr. Lloyd P. Smith.

Q. His name is appended at the end of each minute as the Secretary?

A. No, it is not.

Q. Who was it that wrote what is called, or what you call, the rough copy of the minutes at the meeting of the Board of Directors?

A. Sometimes I wrote them, and sometimes Mr. Smith. I always read them, however, at the next meeting of the Board myself, and they were approved.

Q. How long, to your knowledge, have the minutes of the Library Company been kept in that way?

A. Ever since I have been Secretary, and I think for a long time before.

Q. Turn to page 335 of the minutes, and state whether you find there certain resolutions of the Board of Directors.

A. On page 335 of the minutes of the meeting held January 6, 1870, I find a certain Resolution passed at the meeting of the Board of Directors on that day. I transmitted a copy of that Resolution to Mr. Williams on the day after it passed, in accordance with a resolution of the Board that I should do so.

(A copy of the same compared by the Examiner is hereunto annexed.)

Q. Turn to page 373 of the minutes, and state whether you find there a copy of a letter addressed to H. J. Williams, Esq.

A. Yes, sir, I find the letter: a copy of the letter which I wrote to Mr. Williams on the 12th of January, 1871.

(Copy of letter offered in evidence. Copies of letters objected to without a call upon respondents in reasonable time to produce the originals, and also because the witness has not said that he either made or compared this copy with the original.)

Q. Turn to page 346 of the minutes, and say whether or not you find there the minutes of a resolution offered by Henry M. Phillips, Esq.

A. I do.

Q. Were those resolutions passed at a meeting of the stockholders?

A. Yes, they were passed.

Q. Was a copy of those Resolutions, as found on your minutes, transmitted to Mr. Williams, and, if so, by whom and when?

A. A copy of those Resolutions was delivered personally by myself to Mr. Williams at his residence in Chestnut Hill. I went to his house for that purpose, and delivered a copy of those resolutions personally, on the same day on which they were passed.

(Compared copy annexed.)

Q. Turn to page 355 of the minutes. You find there these Resolutions of the Board:—

"*Resolved*, That the Secretary be directed to inform Henry J. Williams, Esq., the Executor of the Will of Dr. Rush, of the Amendments of the Charter of the Company, and to notify him that the Company are now ready to undertake the performance of their duties as Trustees for the Ridgway Branch of the Library."

The following Preamble and Resolutions were further adopted:—

"WHEREAS, At a meeting of the members of the Library Company, held on the 29th day of June, 1869, Mr. Williams, as Executor of Dr. Rush, expressed an intention of erecting the library building, contemplated by the provisions of the said Will, on the square of ground on the corner of Broad and Christian Streets in this city.

"Now further *Resolved*, That it is the opinion of the Directors of this Company, that the removal of their collection of books to the site thus proposed would, under the circumstances, be destructive of the interests of the Library, and contrary to the wishes of a vast majority of the stockholders.

"*Resolved*, That the Directors take this as the first opportunity since the Company has been authorized by law to

accept the trusts of Dr. Rush's will, to express to Mr. Williams their earnest hope and request that he will reconsider his said intention of building on the site named.

"*Resolved*, That Dr. Willing, Judge Hare, and Mr. Lea be appointed a Committee to communicate these Resolutions to Mr. Williams, and to confer with him on the subject."

Please state whether or not those are the minutes of Resolutions passed by the Board.

A. On page 355 and 356 I find the minutes of four Resolutions on the subject, which were passed December 10th, 1870.

Q. Do you know whether a copy of those Resolutions was furnished to the Committee that are therein named?

A. Yes; I furnished them with such a copy.

Q. Do you remember a meeting or meetings of the Board of Directors at which Mr. Williams made allusion to gifts or testamentary gifts not reduced to writing, which had been made by Dr. Rush?

A. I do recollect Mr. Williams, at some meeting of the Board, having made reference to such testamentary gifts or requests of Dr. Rush.

Q. At how many meetings was such a reference made by him?

A. I don't recollect more than one occasion on which it was mentioned at the Board.

Q. Did Mr. Williams, so far as you know, make any request for a consent, on the part of the Company, that those articles might be disposed of in the manner Dr. Rush desired?

(Objected to as leading.)

A. I don't think that he did. He did not ask the action of the Board upon the subject when I was present at any time.

Q. State, if you please, as near as you can recollect, everything that passed from Mr. Williams on the subject of those gifts at any meeting of the Board, or in any conversation

with any members of the Board, of which you have knowledge.

A. My recollection is, that on the occasion I have alluded to, Mr. Williams stated that there were some small articles, I understood, of furniture, which Dr. Rush had expressed a verbal request should be given to particular individuals. Mr. Williams made this remark, and I don't recollect any reply having been made to it by any member of the Board at that time. I think he said he would like to comply with Dr. Rush's wishes in that respect. There was no resolution on the subject transmitted to the Board, and no objection made. It passed *sub silentio*. Nothing more was said, to the best of my recollection, than what I have stated.

Q. Is it the usage of the Board that when a proposition is before them and no objection is made to it, it is considered as acquiesced in, or is it the custom to take a formal vote?

(Objected to as leading, improper, and irrelevant.)

A. When a resolution is submitted to the Board, a verbal resolution which is not written down, or any course of action in any particular case is suggested, it is not the custom, at the Board, to put these verbal resolutions to vote, and if no objection is made by any of the members present, the assent of the Board has always been taken for granted.

Fourth Meeting, December 8, 1871.

Present—Messrs. McMurtrie, Rawle, Junkin, Johnson, and Examiner.

Mr. Whitman's examination continued.

Witness being shown the minute-book of complainant, already in evidence, is asked—

Q. Have you compared this book with the rough minutes, (as to which you testified yesterday that they were habitually read at the meetings of the Directors,) as to the Resolutions

contained in that book of minutes, of which copies were, you said, transmitted to Mr. Williams? And if so, please state if those Resolutions are therein correctly copied.

A. I have compared the resolutions in the book entitled Directors' Minutes, Volume 7, with the rough copy of minutes which was read at the meeting of the Directors, and I find that the resolutions directed to be transmitted to Mr. Williams, as appears by the rough minutes, are correctly copied into Volume 7.

Q. Were you present at the meeting of the stockholders June 29, 1869?

A. I was.

Q. Please state your recollection of anything said at that meeting by Mr. Williams as to a promise made by him to Dr. Rush, as to the Library or its building.

A. Whether anything was said at that meeting by Mr. Williams as to his promise to Dr. Rush, I do not recollect, and I see nothing on the minutes that brings it to my mind. I confine my answer with regard to statements of Mr. Williams as to his promise to Dr. Rush, to this particular meeting. I recollect his stating a promise to Dr. Rush in relation to the location of the building, but whether that statement of Mr. Williams was made at this particular meeting or not, I do not recollect at this time.

Q. Was this statement you have referred to, made by him at *some* meeting of the stockholders?

A. I think it was, indeed I am sure it was. The statement was made more than once. I think once at a meeting of the Directors, and once at *some* meeting of the stockholders.

Q. What was that statement so made by him?

A. The statement was this: that he had promised Dr. Rush that he would erect this building on the lot on Broad Street, purchased by Dr. Rush, and that he would erect the building there unless he was prevented. I remember this last clause, "unless he was prevented."

Q. Do you remember any statement by him either in a

meeting of the Directors or the stockholders, that he did not care whether the Library Company accepted the bequest or not?

(Objected to as leading.)

Question modified. Please mention any other statements than that you already referred to, made by Mr. Williams as to the Library Company in relation to this bequest.

A. I do not recollect any statement of Mr. Williams that he did not care whether the Library Company accepted the bequest or not. I don't recollect hearing him make such a statement, and I have no recollection at this time of any specific statement—I mean of the words of any specific statement made by Mr. Williams upon this subject at any meeting of the Directors or stockholders—other than that which I have already mentioned. I do recollect, however, that he spoke on the subject of the bequest and the building several times, but I cannot now recollect what the statements he then made were.

Cross-examined.

Q. The rough minutes or blotter with which you have compared the minute marked No. 7, are in Mr. Smith's handwriting, are they not?

A. Most of them, some are in my own. In most of them, or in many of them, the caption, that is, the date of the meeting and the members present at that meeting, are in my handwriting, and in all cases the minutes of each meeting were read by me at the succeeding meeting.

Q. The meetings were monthly?

A. The regular meetings were monthly; there were special meetings and adjourned meetings, but rarely. I mean by adjourned meetings, meetings at other days than the first Thursday in the month.

Q. Did Mr. Smith attend those meetings?

A. He did.

Q. How long after the meetings were the rough notes made, and by whom?

A. They were written by Mr. Smith, at various times, sometimes soon after, sometimes not so soon.

Q. From memory, or from memoranda?

A. In some cases from memoranda, in others from memory.

Q. It was your duty to read these minutes at the following meeting?

A. It was, and I never failed to do so. I conceived it to be the proper course, though there was no by-law to that effect.

Q. From what book did you read?

A. From the book which I called the rough minutes.

Q. When were these rough notes copied into the regular minute-book?

A. I can't tell; from time to time. I did not copy them myself, and therefore cannot tell.

Q. The regular minute-book was never read from at meetings of the Board?

A. At meetings of the Board I think not, but at meetings of the stockholders I think they were read.

Q. You would not see the rough minutes till a short time before you read them at the following meeting of the Board?

A. Sometimes I did, and sometimes not. When I wrote them up myself, I saw them, of course. When Mr. Smith wrote them, I sometimes read them soon after, and sometimes not until just before the meeting of the Board, but I always read them over myself before I read them to the Board.

Q. The object of those minutes was to record acts, and not conversation at the Board, was it not?

A. Yes.

Q. Whenever action was taken at the Board upon any matter involving property in which it was interested, it was recorded in the minutes, was it not?

A. I think it was usually. I cannot say certainly whether every proposal that was made in the Board, and which was not opposed, was recorded in the minutes or not. As to the word *action* in this question, I have to say, as I said

before, that I don't recollect a single instance in which the Ayes and Noes were called upon any resolution or proposal which came before the Board. It was always understood that if there were no objections to a proposal or a resolution, and that the members seemed by their countenances or their silence to approve it, it was considered as passed, and so recorded. That is the action, the only mode of action, which has prevailed in the Board of Directors of the Philadelphia Library since I became their Secretary, and I think for a long time before.

Q. You find no minutes among those of June, 1869, concerning the testamentary gifts by parol concerning which you testified at the last meeting?

A. None.

Q. Have you heard at any of the meetings either of atock-holders or Directors, expressions of opinion by Mr. Williams as to the propriety of the site at Broad and Christian Streets for the erection of a library building?

A. I have.

Q. State what those expressions were, or their substance.

A. They were to the effect, that the lot was a large and eligible one, that he thought it would be as easy for the stockholders, or for a large majority of them, who would have to ride, as he thought, when they visited the Library, to go to Broad and Christian as it would to go to Broad and Walnut, or to any place that had been suggested as a central and convenient location for the Library. I remember his speaking of the several railroads, the Union, and the 13th and 15th, by which stockholders could reach the Library from any part of the city. He also said that this Library was to be built for all time, and that it might be in future as central as any location talked of. He gave various other reasons of that nature.

Q. Did you ever hear him express the slightest doubt as to the propriety of the site?

A. I don't recollect that I have.

Q. Were not such expressions of opinion made at or about the time he spoke of his promise to Dr. Rush?

A. I don't recollect whether the remark concerning the ease of reaching it by railroad, and the probable future centrality of the location, were made at the same time when he spoke of the other. I heard them at several times.

Q. Between what periods of time were any statements made by him on either of these points?

A. Between the annunciation to the Library of the gift by the will, and the last meeting of the stockholders.

Q. How is your memory, Mr. Whitman?

A. Pretty good, sir.

W. E. WHITMAN.

Sworn and subscribed before me,
RICHARD S. HUNTER, *Examiner.*

Sixth Meeting, December 22, 1871.

Present — Messrs. RAWLE, JOHNSON, JUNKIN, and EXAMINER.

Dr. CHARLES WILLING, affirmed.

Q. Are you a Director of the Philadelphia Library Company?

A. Yes, sir.

Q. For how many years have you been so?

A. I do not remember. I think for fifteen years and more.

Q. Do you remember being present at the meeting of the Directors on June 3, 1869, at which Mr. Williams laid before them a copy of the will of Dr. Rush?

A. Yes, I do.

Q. Please state as nearly as you can, anything that passed as to articles of personal property, furniture, &c., which Dr. Rush desired verbally should be disposed of, but as to which no directions were contained in his will.

A. I recollect Mr. Williams mentioning that there were some articles which Dr. Rush had left in that way, and Mr. Williams remarked that among them were some articles of furniture which Mr. Williams thought would be eventually useful for the Library building. I don't know that I have anything more to say, with any degree of distinctness.

Q. Do you remember any request made by Mr. Williams to be allowed to carry out those verbal directions?

A. I can't say that I do remember it in any distinct form, and yet I don't mean to say that it was not so.

Q. Do you remember that the Company declined to grant any such request?

A. I have no recollection of their declining such a request.

Q. Please state if anything was said as to the right of the Directors to bind the stockholders in accepting the devise and bequest under the will.

A. My impression is, in general conversations that took place—of course very general ones—that we refrained from accepting the bequest in any formal manner, and we felt, and I presume expressed the feeling, that a meeting of the stockholders must be called to accept the gift in a legal and formal manner.

Q. It has been given in evidence that at a meeting of the Directors on the 10th of June, 1870, certain resolutions were adopted, requesting in effect that Mr. Williams would reconsider his intention of building on the lot at Broad and Christian Streets, and that yourself, Judge Hare, and Mr. Lea were appointed a Committee to communicate these resolutions to Mr. Williams, and to confer with him on the subject. Please state what you did in consequence of these resolutions.

A. My impression is that these resolutions were sent by the Secretary of the Board to Mr. Williams. I cannot recollect whether I or the Secretary of the Board sent them. I, however, wrote Mr. Williams a note referring to the resolutions, and asking him, if convenient, to grant us an interview. I received a note from Mr. Williams appointing a time and place for the interview, very gracious and kind in

every respect; but inasmuch as Mr. Williams' mind appeared to have been made up on the subject, we thought it unnecessary to trouble him. When I say his mind was made up, I mean as expressed in that note.

Q. What farther communication took place between you?

A. The Committee thought that it would be unnecessary to trouble Mr. Williams with the inconvenience of an interview, and I wrote Mr. Williams a short note, to ask him whether I was to consider the note he had sent me as a formal reply to the Board of Directors. I wrote him, I think, two notes, one in which we declined the interview, saying we feared we should trouble him, and another, in which I asked whether I was to consider his note as a formal answer to the Board, or whether he would write me another.

Q. Was it in answer to that latter note that he wrote the letter of December 30, 1870, printed as Exhibit B to the answer?

A. Yes, it was.

Q. Upon the minutes of the Directors, of January 5, 1871, which have been given in evidence, there is the following entry:—

"A Committee appointed at the last meeting to communicate with the Executor of Dr. Rush, reported that a copy of the resolutions of the Board was sent to Mr. Williams, and he was asked to give the Committee an interview. Mr. Williams replied, assenting to the request of the Committee, and naming time and place. The Committee understood him in his reply to express so decidedly that his mind was unalterably made up as to the selection of a site for the building to be erected under the will of Dr. James Rush, that they did not feel entitled to put him to the trouble of an interview, which could apparently lead to no change of purpose. Mr. Williams then addressed the following letter to the Committee," (and then follows the letter of December 30, 1870, being Exhibit B).

Does that statement from the minutes agree with your recollection as you have just expressed it?

A. Yes, sir.

Q. The defendant has stated at the bottom of page 11 of his answer:—

"I have been met with dictation and resistance, direct and indirect, and a constant struggle to obtain the control of his estate."

Please state any knowledge that you may have as to such dictation, resistance, and struggle to obtain such control.

A. I don't know of any.

Cross-examination declined.

CHARLES WILLING.

Affirmed and subscribed before me,

RICHARD S. HUNTER, *Examiner*.

Seventh Meeting, Friday, Dec. 29, 1871.

Present—Messrs. RAWLE, JUNKIN, JOHNSON, and EXAMINER.

HENRY CRAMOND, sworn.

Q. The minutes of the Directors show that at a meeting held June 3, 1869, Mr. Williams produced a copy of the will of Dr. Rush, and requested that the Board would take immediate steps to ascertain the decision of the Company upon the question of accepting the devises and bequests contained in Dr. Rush's will, on the conditions therein contained. Please state, whether at that meeting or subsequently, Mr. Williams made any statements or requests as to certain articles which Dr. Rush had verbally directed to be given to his friends as remembrances, but as to which there were no directions in the will. And please state what was said by any one in his presence as to these articles.

A. I have been a Director of the Library Company for some years, and was present at that meeting. I recollect

that Mr. Williams mentioned that Dr. Rush had, either verbally or in some informal manner, disposed of certain articles or effects, and, according to my recollection, Mr. Williams said—I cannot give his precise words—but the impression made upon me by what he said was that he would ask the Library Company, or the Directors, I forget which, to assent to and confirm the disposition made by Dr. Rush of these articles. There was no discussion upon the subject, and certainly there was no dissent expressed by any member of the Board. It seemed to me to be prospective. He did not ask as of that time.

Q. The defendant has stated on page 11 of his answer, "I have been met with dictation and resistance, direct and indirect, and a constant struggle to obtain the control of his estate." Do you know of any such dictation and resistance, and struggle to obtain such control?

A. I do not. I may add that I do not know of any formal request made by Mr. Williams to the Directors to confirm Dr. Rush's verbal bequests further than as I have stated.

Cross-examination declined.

HENRY CRAMOND.

Sworn and subscribed before me,
RICHARD S. HUNTER, *Examiner.*

FREDERICK FRALEY, sworn.

Q. It is averred in the Bill, on page 17, that at a special meeting of the shareholders held on the 29th June, 1869, the defendant verbally mentioned his determination to place the Library on the Broad Street lot. That after the meeting, being strongly urged by the Committee to change that site for another equally good, and in a more central location, he, in order to relieve himself from the pressure thus put upon him, assigned among other reasons for his determination, that a loss to the estate would ensue if the lot was not used for that purpose; and that in answer to this it was at once arranged that any such loss would be met by voluntary contributions in relief of the estate; and that thereupon the

defendant declined the proposition, and announced his final determination to place the building upon that lot under all circumstances and regardless of all consequences, unless prevented by a court of competent jurisdiction. Please state whether you were present at that meeting, what part you took therein, and what is your recollection of what is thus averred in the Bill?

(Objected to as being leading, suggestive, and incompetent, both as to matter and form.)

A. I was present at the meeting in June. There were resolutions offered for the acceptance of Dr. Rush's bequest, I think by General Stokes. A discussion arose upon those resolutions in which Mr. Williams participated. He stated among other things, that the lot at Broad and Christian Streets had been selected by Dr. Rush in his lifetime as a site for the Library, and that he had given a promise to Dr. Rush to carry that intention of the Doctor's into effect by adopting that site; and that, however different the opinions of others might be, he considered himself bound as a man of honor to carry the Doctor's intention into effect. He spoke with a good deal of warmth and feeling, and the impression made upon my mind (*objected to as stating impressions*) and the effect upon my mind was that it was an unfavorable time to press a decision of the question upon the resolutions then pending. I moved that they should be referred to a special Committee to consider and report upon them, with a view to a friendly conference with Mr. Williams upon the subject, and I urged the appointment of such Committee in some remarks that I made to the meeting at that time. My proposition was agreed to, and a Committee consisting of Judge King, Mr. Longstreth, and myself, was appointed. The Committee met, organized, and requested me to confer with Mr. Williams. I made an appointment with him for such a conference, met him, and went pretty fully over all the matters connected with the bequest, expressed to him strongly the belief I had that unless the site were changed the shareholders would not agree to accept the legacy, and then

directed his attention to several other sites that I supposed would be more favorable for the Library, and stated that if any one of them were selected, all opposition would be quieted. Mr. Williams replied that those lots had all been examined, that the prices at which they were held were so high as to prevent the acceptance of any of them by Dr. Rush, and that the Broad and Christian Street lot had been selected because both in the judgment of Dr. Rush and of himself, it combined all the advantages that he wished to secure. I then proposed to Mr. Williams that he should reconsider the matter, and that I felt sure if he would adopt a different site, the cost of which should be more than the price of the Broad and Christian Street lot, that then, from my intercourse with the shareholders, I believed they would make up the difference in the price of the lots, or any loss that might be sustained by the sale of the Broad and Christian Street property. Mr. Williams, however, firmly declined to entertain any such proposition. He repeated to me in still stronger terms than he had used at the meeting, how fully he felt bound by his promise to Dr. Rush, and that, as in his own judgment the Broad and Christian Street lot was the best site in all respects for the Library, he should place it there, unless he were prevented by the order of some court of competent jurisdiction. That interview was several days after the meeting, and was made by note from me to Mr. Williams. Mr. Williams then promised to make a reply to me in writing, in which he would state his views of the obligations upon him in regard to the will, and after the receipt of that letter the Committee met and agreed upon a Report which was printed in advance of the meeting of shareholders, and finally submitted to them for their action. This meeting, I think, was held in October, 1869. After that meeting, there was a new Committee appointed, consisting of three Directors and three shareholders of the Library, and I had another conference with Mr. Williams, but the result was practically the same as in the former case.

Q. Do you remember that at the meeting of June 29th, anything was said to Mr. Williams as to voluntary contribution to make up the loss sustained by the purchase of the Christian Street lot?

A. After Mr. Williams had spoken, there was in addition to the public speaking addressed to the Chair, some conversation among the gentlemen that surrounded him, and I think a suggestion was made of the sort that I have referred to; the gentlemen participating in that conversation urging it upon Mr. Williams that it was very desirable to have a site that would meet with general approbation, and that money would be contributed, without any doubt, if that were needed, to procure a better site; but there was no distinct proposition to that effect presented to the meeting to vote upon. In the whole of my conferences with Mr. Williams, I desired to get him to consent to the change of site by assuring him there would be no difficulty that might arise from the cost of the lot. But I found that he considered, from the selection made by Dr. Rush, and his own judgment upon the question, that he would not, in any voluntary way, agree to a change of the site.

Cross-examined.

Q. There was never any actual arrangement made with regard to making up the money to the estate?

A. No, sir, there was never any positive arrangement.

Q. What arrangement had been made prior to your conversation with Mr. Williams on the subject?

A. No arrangement, in my knowledge, was actually made. All that I did was to offer to make, and try to carry into effect, such a proposition.

Q. What other lots did you suggest to Mr. Williams as more suitable for the site?

A. I suggested the lot belonging to the Reading R. R. Company, at Broad and Cherry Streets. I don't recollect its front.

Q. Was it less than 150 feet?

A. I do not know. I suggested the one opposite on the west side of Broad Street. I think it belonged to a Mr. Steel. I do not recollect its dimensions. I suggested the property of the Deaf and Dumb Institution, at the corner of Broad and Pine Streets, and a lot belonging to General Patterson, on Locust Street east of Broad, and a lot on Thirteenth and Market Streets, now used as the Pennsylvania R. R. depot. At one of the interviews with Mr. Williams, I suggested that the former residence of Dr. Rush, on Chestnut Street, should be taken. That was subsequently. I believe those were all that I suggested.

Q. Please state, as nearly as you can, the prices asked for those different lots respectively.

A. I think I had no list of prices asked with me, nor did I prepare myself with such a list.

Q. Did you then know the prices of those lots?

A. I knew from reports about the prices at which they had been held; but when I presented them to Mr. Williams, he informed me they had all been passed upon by Dr. Rush and himself, with, perhaps, the exception of General Patterson's lot, and the prices and sizes had not been found satisfactory.

Q. At about what is the Deaf and Dumb Asylum lot held?

A. I have heard various prices named for it. I think at that time it was held at $250,000.

Q. Was not the Pennsylvania R. R. depot lot held at from $300,000 to $350,000?

A. I am not able to say.

Q. Had you spoken to anybody prior to this with a view to ascertaining whether contributions could be had to make up a difference of from $125,000 to $175,000 in purchase of lot?

A. While the matter was under my charge as Chairman of the Committee, I was called upon by a number of the shareholders, and had very full conversations with them about the matters referred to the Committee, and while there was no actual subscription paper signed, or any one proposed, the

general expression of opinion of those who so called upon me, and conferred with me, I considered warranted me in assuring Mr. Williams that any amount which would be required for change of site would be procured.

Q. Were figures of that magnitude ever suggested by anybody?

A. The prices at which these lots were reported to be held were pretty well known.

Q. Did any of the persons with whom you conversed express a willingness to make up the difference in the cost of the purchase of either the Deaf and Dumb or the depot lot?

A. There was no specific reference to the purchase of either of those properties, but the sites considered as those that would commend general approbation, were to be between Vine and South Streets and west of Fifth or Sixth Streets to the Schuylkill.

Q. Did you ever hear Mr. Williams express any doubt as to the Broad and Christian Street lot being the best site, in his judgment, for the Library building?

A. At the meeting in June, and in all my subsequent interviews with Mr. Williams, he expressed in the strongest possible way his conviction that the lot at Broad and Christian Streets, was the best possible site for the Library, one in which his own judgment concurred with that of Dr. Rush, and that he would not voluntarily consent to relinquish it as a site for the building.

Q. Can you say about how long the Library Company has been engaged in the work of raising its present Building Fund?

A. I cannot speak positively, but I think it must be over twenty years since the effort was begun. It was a very long time. I made a subscription to it when it was started. It must be about twenty years.

Re-examination.

Q. Assuming the lot at Broad and Pine Streets to be worth $250,000, and that the lot at Broad and Christian Streets

to be worth $130,000, and that the Building Fund amounted to $90,000, please state what would be the amount of loss to be made up by voluntary contribution.

A. On that assumption, there would be $30,000 to be made up.

Q. If, then, we take into consideration the value of the present Library lot and building at Fifth and Library Streets, say $80,000, what will be the result of the figures?

A. There will be a fund of $50,000 remaining to the Library, after defraying the cost of the lot.

Re-cross-examined.

Q. Did you then know, when speaking to Mr. Williams, or do you now know whether the Building Fund then belonging to the Company could be devoted to any such purpose, or did you have its amount in your mind when speaking to Mr. Williams?

A. I had in my mind the whole condition of the Library Company. I had made inquiry as to its property and funds, and the trusts under which they were held, and considered that they had a sufficient amount clearly at their own disposal to appropriate it in aid of the purchase of a site and the erection of a building.

Q. Then you did not, in your interview with Mr. Williams, propose that the difference should be made up by voluntary contributions?

A. In my interview with Mr. Williams the whole condition of the Library Company was brought into view, and what was said as to voluntary contributions was understood by me as covering what might be given by the Library Company itself, as well as by individuals. I was very anxious to produce harmony of feeling and action in the matter, and to do everything in my power to conciliate Mr. Williams, so as to relieve his mind from any possible fear of a loss to the estate by any change of site.

Q. Was the Building Fund mentioned?

A. Yes. The whole matter was gone into. The conference was very full.

Q. Do you know at what price the Broad and Christian Street lot could have been sold, or had you made any inquiries concerning it?

A. I believe that it could have been resold without loss, and that if held, it might produce a profit.

F. FRALEY.

December 29th, 1871.

Sworn and subscribed before me,

RICHARD S. HUNTER, *Examiner.*

Eighth Meeting, January 5, 1872.

Present — Messrs. RAWLE, JOHNSON, JUNKIN, and EXAMINER.

HON. J. I. CLARK HARE, sworn.

Q. Are you a Director of the Library Company, and about how long have you been so?

A. Yes, and for some ten years.

Q. The minutes of the Directors show that at a meeting held June 3, 1869, Mr. Williams produced a copy of the will of Dr. Rush, and requested that the Board would take immediate steps to ascertain the decision of the Company upon the question of accepting the devises and bequests contained in Dr. Rush's will, on the conditions therein contained. Please state whether Mr. Williams, at that meeting or subsequently, made any statements or requests as to certain articles which Dr. Rush had verbally directed to be given to his friends as remembrances, but as to which there were no directions in the will. And please state what was said by any one in his presence as to these articles.

A. I do not remember any such requests. Mr. Williams was present at several meetings of the Board, at which I was also present. He urged on the Directors the prompt acceptance of Dr. Rush's bequest. The Directors were averse to giving an immediate reply, without consulting the Stockholders, and because they were not sufficiently informed as to the location of the building or the amount of the fund which would be disposable for the increase of the Library. Incidentally, Mr. Williams mentioned that Dr. Rush had expressed a desire, in his last illness, with regard to the disposition of certain articles not mentioned in the will. I did not understand this to be a request requiring an answer from the Directors, but a suggestion looking to a request at á future day, when the Directors should be in a position to give an answer. It was obvious that the Directors could not legally or with propriety, undertake to dispose of property which might never, in any sense, vest in the Library Company. There was, however, a general expression of acquiescence and readiness to facilitate Mr. Williams in that or any other matter to which the power of the Directors might extend.

(Mr. Johnson objects to the whole of the Answer after "certain articles not mentioned in the will," as irresponsive and argumentative, and as conveying the impression of facts left on the mind of the witness, and not a statement of the facts as they occurred.)

Q. The defendant has stated on page 11 of his Answer, "I have been met with dictation and resistance, direct and indirect, and a constant struggle to obtain the control of his estate." Do you know of any such dictation and resistance, and struggle to obtain such control?

A. I should say that the reverse of that statement would be more nearly exact. Resistance there was none, except to the demand for an immediate reply. That resistance implied what was distinctly expressed, privately and in public, an entire willingness to leave the administration of the fund in the meantime to the good sense, the experience and the

fidelity of Mr. Williams. There was a request, very modestly preferred, as to the probable expense of the building, and the amount likely to remain for the purposes of the Library; information which was not afforded. Unless this be the dictation to which Mr. Williams refers, I know of none.

Cross-examined.

Q. Does your Answer to the third interrogatory apply also to the request made by the Library Company in the prayers of their Bill?

(Objected to, because the Bill will speak for itself.)

A. My Answer had reference exclusively to what occurred before suit brought, and I do not purpose, unless requested by counsel, to express any opinion upon what has occurred since suit was brought.

J. I. CLARK HARE.

Sworn and subscribed before me,

RICHARD S. HUNTER, *Examiner.*

Dr. GEO. W. NORRIS, sworn.

Q. Are you a Director of the Library Company, and about how long have you been so?

A. I have been a Director there for many years, over twenty.

Q. The minutes of the Directors show that at a meeting held June 3, 1869, Mr. Williams produced a copy of the will of Dr. Rush, and requested that the Board would take immediate steps to ascertain the decision of the Company upon the question of accepting the devises and bequests contained in Dr. Rush's will, on the conditions therein contained. Please state whether Mr. Williams, at that meeting or subsequently, made any statements or requests as to certain articles which Dr. Rush had verbally directed to be given to his friends as remembrances, but as to which there were no

directions in the will. And please state what was said by any one in his presence as to these articles.

A. I recollect Mr. Williams making some statements in regard to the will of Dr. Rush, but I have no recollection of his making any request of the Directors, and I have forgotten any remarks made by the Directors. A general conversation ensued in regard to the matter.

Q. The defendant has stated, on page 11 of his Answer, "I have been met with dictation and resistance, direct and indirect, and a constant struggle to obtain the control of his estate." Do you know of any such dictation and resistance, and struggle to obtain such control?

A. I am not aware of any dictation or anything of the kind in regard to the matter.

Cross-examined.

Q. You speak of a general conversation which ensued with regard to the matter. Do you mean the matter of the parol gifts, or of the will of Dr. Rush generally?

A. About the request made. I think some conversation ensued.

Q. What either Mr. Williams or any of the Board said, you do not now recall?

A. I do not, sir.

GEO. W. NORRIS.

Sworn and subscribed before me,
RICHARD S. HUNTER, *Examiner*.

DAVID LEWIS, affirmed.

Q. Are you a Director of the Library Company, and about how long have you been so?

A. I am now a Director, and have been so for about sixteen years.

Q. The minutes of the Directors show that at a meeting held June 3, 1869, Mr. Williams produced a copy of the

will of Dr. Rush, and requested that the Board would take immediate steps to ascertain the decision of the Company upon the question of accepting the devises and bequests contained in Dr. Rush's will, on the conditions therein contained. Please state whether Mr. Williams, at that meeting or subsequently, made any statements or requests as to certain articles which Dr. Rush had verbally directed to be given to his friends as remembrances, but as to which there were no directions in the will. And please state what was said by any one in his presence as to these articles.

A. My recollection is not very good, but I think Mr. Williams stated that certain articles had been verbally bequeathed by Dr. Rush as remembrances to certain persons, and that no one except the Library Company could make objection to his bestowing them in the manner designated. My recollection of the proceedings is that the feeling of the Board was entirely to consent to what Mr. Williams desired, as far as they had the power. There was no motion made nor could one well have been made at that time (*objected to*), as it would have been premature; but from what passed, had Mr. Williams done what he intended, it never would have been called in question.

Q. The defendant has stated, on page 11 of his Answer, "I have been met with dictation and resistance, direct and indirect, and a constant struggle to obtain the control of his estate." Do you know of any such dictation and resistance, and struggle to obtain such control?

A. None, that I know of, unless the present proceedings are considered so.

Cross-examined.

Q. The matter of your Answer to these particular interrogatories has been considered by you prior to your coming here to testify, and you have reduced to writing the substance of your Answer, have you not?

(Objected to, Mr. Rawle stating that in order to save time

and give the witness an opportunity to think over the matter, he had yesterday sent him, for that purpose, the three questions which had been propounded to him to-day.)

A. I have, sir, considered it since yesterday, and reduced it to writing to refresh my memory.

Q. In what words was the feeling expressed to which you testified in your answer to the second interrogatory?

A. I do not recollect the words.

Q. Are you sure that there were any words expressing such feeling?

A. I think there were.

Q. By whom uttered?

A. I cannot say. I have no distinct recollection of the words.

Q. Do you remember any expression of assent by any one at that meeting to Mr. Williams doing what he desired with regard to the articles to which he had referred?

A. I do not remember.

Q. Were you present at the Stockholders' meeting met to consider the matter of acceptance of Dr. Rush's bequest?

A. I was.

Q. Was there no resistance there manifested?

(Objected to as not proper matter for cross-examination.)

A. I came in there late and simply voted. There was no doubt resistance, but I do not recollect.

Q. Have you seen all or a large portion of the correspondence addressed to Mr. Williams with a view of securing the choice of a site for the Library Building at a place other than Broad and Christian?

A. I have seen some part of it, it may be all, I cannot say.

Q. Were you present at the interviews held with him by gentlemen acting on behalf of the Library Company, with a view to securing the same object?

A. I was not.

Q. Can you now state the specific portions of the corre-

spondence about which you have been asked, that you have seen?

A. I have no particular recollection of any of it.

D. LEWIS.

Sworn and subscribed before me,

RICHARD S. HUNTER, *Examiner.*

JAMES S. BIDDLE, sworn.

Q. The minutes of the meetings of the Stockholders show that Judge King and yourself were appointed tellers to receive the vote on the resolutions to be submitted to the Stockholders at their meeting on Tuesday, October 19, 1869. Please state what were the voting tickets then submitted to the Stockholders, and produce and identify the same.

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[**Ex. No. 20.**] A. *That* is the only ticket voted upon. I presume this is what the question calls for. (Ticket produced and marked Exhibit 20.) Each voter put *aye* or *no* against each of the resolutions.

Q. Please state also what, from your knowledge, was the effect of the vote of the Stockholders as cast at that meeting with respect to any proposed change of site of the Library Building or removal of its present collection of books?

(Question objected to because it asks for the opinion of a witness, and not for a statement of facts.)

A. It was very clear that a very large majority expressed a desire more or less emphatic, that the entire Library should not be removed to Broad and Christian Streets. Before the election there were two printed circulars issued, one by those in favor of accepting the Rush legacy, the other by those whom, for convenience, may be called rejectors. These are two of the original circulars.

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p 136 ?

[**Ex. No. 21a, 21b.**] (Circulars produced and marked Exhibits 21a, 21b.)

The acceptors, as will appear by the circular, urged their friends to vote *aye* on the first four resolutions, and *no* upon the fifth. The rejectors urged their friends, as will appear

by the circular, to vote *no* upon the first four resolutions and *aye* upon the fifth. The voting in the main was in conformity with these recommendations, so that over 250 *acceptors* voted aye upon the second resolution, and over 250 rejectors voted aye on the fifth resolution. Both these resolutions expressing a desire not to remove the whole Library.

(Answer objected to as being merely the opinion of the witness, in a matter in which he has not shown that he is an expert, and being argumentative and mainly a volunteer.)

Cross-examined.

Q. The votes folded up, were handed to you as one of the tellers, were they not?

A. They were deposited by the voter in the box through a slit. That is my recollection.

Q. You had no conversation with the Stockholders as they deposited their votes?

A. With some of them I had, but not with reference to their votes. I voted a number of proxies myself.

Q. All the voting done that day was by ballot, was it not?

A. Entirely.

Q. Can you say of your own personal knowledge what reasons influenced the vote that day of any Stockholder, saving yourself, or such gentlemen or ladies as may have mentioned in your presence their reasons?

except

A. I cannot expect to judge from the general discussion and canvass which preceded the election. I had a great many conversations with different members who expressed the views indicated in my original answer.

Q. With how many altogether did you have such conversations?

A. The answer would be a mere guess. I might say twenty. I might say fifty. I think the latter number would be nearer the mark.

(The witness desires to add as follows: In counting the votes after the election, I have a clear recollection that most of the tickets were voted aye on the first four resolutions, and no on the fifth, or else no on the first four resolutions, and aye on the fifth, and this facilitated very much the summing up of the votes.)

JAMES S. BIDDLE.

Sworn and subscribed before me,
RICHARD S. HUNTER, *Examiner.*

Ninth Meeting, January 19, 1872.

Present—Messrs. RAWLE, JUNKIN, JOHNSON, and EXAMINER.

T. MORRIS PEROT, affirmed.

Q. Have you been actively connected with the Mercantile Library Company of Philadelphia, and for how long?

A. I have been a Stockholder nearly thirty years, a Director the last eleven, President the last ten.

Q. When was the Mercantile Library established at the southeast corner of Fifth and Library Streets?

A. It was in 1845.

Q. When was it removed from there to its present location on the west side of Tenth Street below Market?

A. In July, 1869.

Q. Please state what circumstances influenced you in choosing the present site for that Library.

A. The main consideration in choosing the site was its convenience for the great bulk of the people. We considered Tenth and Chestnut Streets as more in the walks of the great majority of our Stockholders than any other walk we could select. In the opinion of the Directors, it is necessary, as

this was a Circulating Library, as also a Library for readers and students, to have it in a central location.

Q. What, in your opinion, would be the effect upon your institution of the removal to such a site as the corner of Broad and Christian Streets?

(Objected to.)

A. I think it would reduce our membership in one year from 11,000 to probably 3000, and the Library for the next year or two would still continue to decrease.

(Objected to.)

Q. Have you taken into consideration the fact that "the facilities afforded by passenger railways are such, that to those north of it who may wish to use the Library, a ride of a few squares additional will make no difference in cost and but little in time"?

A. Yes, sir, I think the reduction would be about in that proportion, notwithstanding that fact. The expense would be greater, as they would have to take an exchange ticket. If our Stockholders or members were students instead of merchants or business men, the difference in location would not be so glaring, *i. e.*, the number of Stockholders would not fall off in the same proportion, because students make it their business, and they would travel a great way to obtain what books they required, while the great bulk of our Stockholders are persons who use the Library as mere readers.

Q. Are you acquainted with the character of the institution which is the complainant in this suit?

A. I am somewhat acquainted with it; I have been a member of it for some years.

Q. What, in your opinion, would be the effect upon that institution of being placed at Broad and Christian Streets?

A. I think it would drive away more than half of its members—that is, I think more than half the members would not pay their subscription. (Question and answer objected to.) I know it to be out of the walks of the great majority of the present members.

Q. Apart from the question of locality, what, in your opin-

ion, is the effect of the dust of a large street like Broad Street upon a large public library?

(Objected to.)

A. I do not think the dust would be a very serious objection, although of course an objection. If I were to locate a library, the dust on Broad Street would not appear to me an insuperable objection; other things being equal, I should prefer a more private street.

Q. What, in your opinion, are the capacities for this Library of the lot it now owns at the northwest corner of Juniper and Locust Streets; 110 feet on Locust Street by 240 in depth?

(Mr. Junkin objects to all matters of mere opinion, without repeating his objection to each question or answer of witness.)

A. I do think the lot was amply sufficient to build a library building suitable to the Philadelphia Library for many years. As to location, the Directors of the Mercantile Library looked at that lot before they purchased their present site, but determined that for them it was too far south. I think, however, it would be a more suitable location for the Philadelphia Library than for the Mercantile, as more of its patrons reside in the western and southern portion of the city.

Q. Do you consider that location a desirable one for the Philadelphia Library?

A. I think it likely that it is a desirable location, though not so desirable as it would be if nearer Chestnut Street. Probably you could not obtain a lot of the size in a better location for any reasonable amount.

Q. What is the size of your present property on Tenth Street above Chestnut?

A. I think a little over 100 feet, including the alley way, by 300 feet deep. The alley is 16 feet, and is part of the hundred feet of which I have spoken.

February 2, 1872.

Mr. Perot cross-examined.

Q. Was it proposed at one time to locate the Mercantile Library building at Broad and Pine Streets, and did you favor that location?

A. I may say that the Library Company were looking for a suitable property, and among others that location was proposed. It was not favored by me, and, I think, had no advocate in the Board.

Q. In your judgment, is the location at Locust east of Broad a suitable one for the Philadelphia Library Company?

A. I think it a fair location.

Q. How far is it from that location to Broad and Christian in distance, and in time in the cars or on foot?

A. I am so little acquainted with that part of the city that I must think about the matter; I think about seven squares; about ten minutes in the cars and fifteen on foot.

Q. Have you ever examined the lot at Broad and Christian Streets, with a view to its adaptability for the purposes of a library building?

A. I have only given it a casual view.

Q. When did you last give it such casual view?

A. Probably about a month or six weeks ago.

Q. Did you then go for the purpose of forming an opinion on this subject, or were you merely passing casually?

A. Merely passing it to the depot at Broad and Prime.

Q. In what part of the city is your residence, and in what is your business?

A. I reside No. 1810 Pine street, and my business is at 21st and Spruce and 314 Vine street.

Q. Have you much acquaintance with the improvements that are being made south of Pine Street, and are there not now a great many buildings being erected in that part of the city?

A. I think there are a great many buildings being erected in the southwest part of the city.

Q. Have you ever examined the lot in question in connection with the provision of Dr. Rush's will, with a view to forming an opinion as to its being a suitable location for the erection of the Library Building contemplated in that will?

A. I have not examined the lot with reference to that particular matter. I have examined the location, but not the lot.

Q. Have you examined the location in careful consideration of the provisions of that will?

A. It is some time since I read the will, and therefore I cannot say that I have examined it in such connection.

Q. Is not Broad Street the best one in the city for the display of architectural effects?

A. I think it is?

Q. Have you ever examined critically the catalogue of the Philadelphia Library with a view to ascertaining the nature and character of its collection of books?

A. I have examined the catalogue, not critically, but sufficiently, I think, to determine the character of the books. I have looked at the catalogue frequently during the last five or six years, but not critically for this purpose.

Q. How do the number of its books compare with that of the Mercantile Library?

A. The Philadelphia, I think, has from 15,000 to 20,000 more volumes than the Mercantile, which has 65,000 volumes.

Q. What proportion do the novels and works of a light and ephemeral character on the catalogue of the Philadelphia Library bear to the other works in it?

A. I cannot answer that question with any certainty. I should judge about five to eight per cent. It might be ten.

Q. What is the proportion of similar books in the Mercantile Library?

A. Twenty to twenty-five per cent., I should suppose.

Q. Are not the books in the Philadelphia Library, as a whole, of a higher order, scientific and otherwise, than those

in the Mercantile Library, and more for the use of students than everyday readers?

A. I think they are: though the Mercantile during the last few years has purchased more of the standard books than the Philadelphia.

Q. The Mercantile Library is designed for a popular Library, is it not, or a Circulating Library?

A. Yes, sir, though it is gradually becoming more used by students than formerly, though it will always be mainly a Circulating Library.

Q. What proportion of its books taken out are included in the class of novels and works of light literature of an ephemeral character?

A. About seventy per cent. We keep statistics that will exhibit the exact facts. I think from them that is the proportion.

Tenth Meeting, November 12, 1872.

Present—Messrs. RAWLE, JUNKIN, and EXAMINER.

Mr. Perot cross-examined.

Q. Are not very much the largest proportion of the books used and taken out of the Mercantile Library novels and light current literature?

A. They are.

Q. In the Mercantile Library you have accommodations for your Stockholders, who may wish to meet and chat with their friends, have you not?

A. Yes, sir, we have what we call a conversation room for the males, and a ladies' parlor for the females, in both of which places they can converse.

Q. Have you not also chess-rooms and a lecture-room, and a large newspaper reading room?

A. We have a chess-room, a lecture-room, and a news-

paper reading-room. The lecture-room is used for renting as well as for our own purposes.

Q. In your reading-room you have all the prominent newspapers, and magazines, and reviews? and are not these very largely used by your Stockholders and their friends?

A. We have a newspaper reading-room exclusively devoted to newspapers. We also have two other reading-rooms; one for ladies, the other for gentlemen, in which are kept the magazines and periodicals, which are largely used by our Stockholders.

Q. Have you a pretty general knowledge of the Stockholders of your Company and of the sections of the city from which they principally come?

A. Having over 11,000 Stockholders, it is impossible that I should know them or their residences; but I believe we are about in the centre of their residences or business places; or rather within their walks and daily resorts.

Q. What knowledge have you of the Stockholders of the Philadelphia Library Company, and of their residences and character, as to the purposes for which they now use the books of their Library?

A. I cannot say I have any knowledge whatever. I have a general idea, but I have no knowledge. I know some of its members, but have never seen any correct list of its Stockholders.

Q. Of how many does its list of Stockholders consist?

A. I have understood it consisted of about 900, but have no certain knowledge.

Q. Of those 900, how many do you personally know, and their residences or walks in business?

A. Not having seen the list of the members, I cannot say.

Q. Not knowing personally who the Stockholders of the Philadelphia Library are, nor their residences, nor the character of the use they make of the Philadelphia Library, nor their walks in business, how are you able to say, as you do in your examination in chief, "I think it (the location at Broad and Chestnut Streets) would drive away more than

half of its members;" "I know it to be out of the walks of the great majority of the present members"?

A. I did not say that I did not know the character of the use they made of the Philadelphia Library. Although I do not know personally who all its members are, still I think I have a general idea of their character and places of residence. My understanding has always been that the Philadelphia Library was more used by scholars than the Mercantile, consequently the proportion of standard works read was greater.

Q. Is it not much more important, in your opinion, that the location of the Mercantile Library should be what you have called a central location, with respect to the residences and places of business of your Stockholders, than in the case of the Philadelphia Library?

A. It think it is, but I think it important in any circulating library.

Q. Have you examined the will of Dr. Rush so as to form an opinion as to the character of the library he designed or desired in his will to have established?

A. I read the will just after his death and formed an opinion on the subject.

Q. What is your opinion?

(Objected to.)

A. My opinion formed at the time was that he desired a library for students particularly, and for reference.

Q. Such being your opinion, would it make any difference whether that library were located at Broad and Christian, or Broad and Locust?

A. I think Broad and Locust would be the best location even for a library of that description; but the Philadelphia Library being a circulating library as well as a library for reference, it certainly would be the best situation for it.

Q. The library designed by Dr. Rush being such as you have stated, would it make any practical difference in its usefulness whether it was located at Broad and Christian or Broad and Locust Streets?

A. Understanding your question to be, in case the Philadelphia Library does not accept this bequest, and the Ridgway Library is established by itself,—it would not make the same practical difference that it would if combined with a stock library; still, I think any library would be better in the heart of the city.

Q. Your knowledge upon the whole subject is derived, is it not, from your connection with the Mercantile Library, which is, as you have said, a circulating and popular library?

A. My principal knowledge is derived from that source.

Q. What great libraries have you visited in this country or other countries?

A. None in other countries; many of the principal libraries in this, I think, such as the Boston Free Library, the Astor Library, and others.

Q. Which of those that you visited in this country are at or near the centres of population and business?

A. Nearly all. The Boston Free Library, opposite the Common; the Mercantile Library of New York, within a quarter of a square of the business part of Broadway, near Stewart's upper store, near Ninth Street; the Astor Library, a square or two from the Mercantile.

Q. How far is the Astor Library from the centre of business in New York?

(Objected to, as leading into examination of the question: "What is the centre of business in New York," which may admit of different answers for different purposes.)

A. At present I think it is very near the centre of the retail business of New York.

Q. Are you able to say whether the lot owned by the Philadelphia Library Company, on Locust east of Broad, is adequate for the erection upon it of such a building as is contemplated by the directions in Dr. Rush's will?

A. As to dimensions I should think it was.

Q. What are the dimensions of that lot?

A. 110 feet by 240, as I find by referring to my examination in chief.

Q. Can you now state from recollection what the dimensions of the building called for in Dr. Rush's will are?

A. I cannot positively. It seems to me 150 feet square.

Q. Is there any opportunity for architectural display on the Locust Street lot?

A. I think there is some opportunity, though not near so great as it would be on the Broad Street lot.

T. MORRIS PEROT.

Affirmed and subscribed before me,
RICHARD S. HUNTER, *Examiner.*

Ninth Meeting, January 19, 1872.

Present—Messrs. RAWLE, JUNKIN, JOHNSON, and EXAMINER.

OLIVER EVANS, affirmed.

Q. How old are you, Mr. Evans, and how long have you lived in Philadelphia?

A. I am fifty-nine years old; I have lived here about forty years.

Q. Have you been actively connected with the Mercantile Library Company, and for how long?

A. I have been a Director of that Library for ten or twelve years, as near as I can remember; I have been an active member of the Board.

Q. When was the Mercantile Library established at the southeast corner of Fifth and Library Streets, and when was it removed thence to its present location on the west side of Tenth Street, between Chestnut and Market?

A. I am not able to state the date of the former position without statistics, but I think it has been in its latter position some five or six years. This is merely from memory.

Q. Please state what circumstances influenced you in choosing the present site for that Library?

(Objected to as irrelevant.)

A. There were two prominent reasons which induced the Board to make that change; one was the improper accessibility (being on the second floor), but the other and most prominent, was a desire to get near the heart of the city in order to increase our usefulness and number of subscribers. In moving from Fifth and Library, we went with a stockholders' list of, I think, about 5000, and we have been enabled by our new location to advance our present list to about 12,000.

Q. For what reasons do you consider your present locality so desirable?

A. It brings us more intimately into connection with the better or reading public, the intelligent class of the community; the railroads centre in that direction, and our Library is more easily reached in the leisure hours of the day; we are more central and much easier of access; we have been much gratified by the change in that particular.

Q. What, in your opinion, would be the effect upon your institution of its removal to such a site as the corner of Broad and Christian Streets?

(Objected to as irrelevant and a matter of opinion, not evidence.)

A. Really, it would have so disastrous an effect upon the surroundings and prospects of the institution that I believe the Directors would resign. The population of Philadelphia now is tending so much to the west and northwest, especially that class to which we look for support, that I should consider it a matter perfectly suicidal to attempt to remove to that locality.

Q. Have you taken into consideration the fact that "the facilities afforded by passenger railways are such that to those north of that site who might wish to use the Library, a ride of a few squares additional will make no difference in cost and but little in time"?

A. I have; my experience is such that when business of the ordinary nature leads, people do not hesitate to surmount those difficulties; but those who frequent our Library are not led by such motives as a general thing, and would not go out of the ordinary current of travel to obtain a book.

Q. Are you acquainted with the character of the institution which is the complainant in this suit?

A. Yes, somewhat; it is a much closer institution than ours, so to speak; its membership is very small in comparison and of a very different class in the community, I think.

Q. Taking all these circumstances into consideration, what, in your opinion, would be the effect upon that institution of being placed at Broad and Christian Streets?

(Objected to.)

A. My feelings would lead me to speak somewhat comparatively on that question; my opinion is that it would to a very great extent ignore the use of the Library to its present members; it would be a very good location for a market house, but I should as soon think of one of our large and fashionable drygoods stores going there as a library; the surroundings are so different from what I should suppose the present members at least would desire for themselves and their families.

Cross-examined.

Q. Mr. Evans, what, in your opinion, would be the effect of removing the Mercantile Library Building down to Broad and Pine Streets?

A. There was some desire on the part of some of the Directors at the time the present location for our Library was selected, to procure a site on Broad Street between Spruce and Cherry, but after weighing the matter for some time, it was decided almost unanimously to locate at our present site.

Q. Then you think such a location would have been a good or a bad one?

A. I think our present location seems to meet the demands of the community better than that, though I was in favor personally of the Broad Street site; there was some objection made to its being located upon Broad Street at all, and I have since had cause to believe it was a just objection, to wit: the great and increasing travel upon Broad Street has and is tending to so much noise, &c., that I think it is not so desirable as formerly for a public library; from the reasons just stated, I think a location at Broad and Pine Streets would not tend to increase our number of Stockholders; pleasure travel on Broad Street is greatly increasing each year.

Q. If you were now to select, you would not think of selecting a lot for your Library at Broad and Pine?

A. Not as bettering our condition, certainly.

Q. Do you know how great the distance is between Pine and Christian, in feet?

A. I do not; it would be an easy matter to count the streets, and there are generally about 200 feet to a square.

Q. You couldn't say?

A. I can say it was more than 1000, and can say it is not over 4000 feet; it is not over a mile.

Q. How long has it been since you have been to Broad and Christian Streets?

A. I have passed it on my way to the Baltimore depot, probably within a month.

Q. Have you ever examined the lot there with a view to its adaptability to the purposes of a library building?

A. I have not the slightest knowledge of the locality in that connection. It never crossed my mind, except when named in the public papers, in connection with the bequest of Dr. Rush. I have scarcely thought of it since except when my attention was called to it within a day or two.

Q. Do you know the amount of population south of Christian Street?

A. I have never thought of it.

Q. Do you know whether or not immense numbers of

new buildings south of this location are now being erected? Have you seen any announcements to this effect in the public prints?

A. I have, both personally and otherwise.

Q. What was the effect of your observations?

A. The effect on my mind was that the city was becoming inclined that way with a certain class of buildings and population.

Q. Do you know any street which better than Broad Street displays architectural effects?

(Objected to.)

A. There is a better display now made in Walnut Street above 15th, but the width of Broad Street certainly affords opportunity for a better display of architectural beauty.

Q. Have you ever ascertained the length of time required to go on foot, by car, or by carriage from Broad and Prime to Broad and Christian?

A. I think a ten minutes' walk would bring you from Prime to Christian.

Q. Are you sure a five minutes' walk would not?

A. It must be rather rapid, I think.

Q. Have you ever critically examined the catalogue of the Philadelphia Library Company with a view of ascertaining the matter and character of its collection of books?

A. I think I may say I have. Not within two years.

Q. About how long since?

A. I think about three years. My object at that time was to look into this very subject of the character and number of their books.

Q. How did its numbers compare with your own?

A. I think they are larger.

Q. What proportion did novels in that catalogue bear to its other books?

(Objected to.)

A. Nothing like as large as it is with us in our Library. The character and kind of works in the Philadelphia Library I consider of a very high order, scientific and other-

wise. Their works are more for the student, I think, than the everyday reader.

Q. The Mercantile Library is designed as a popular library?

A. It is a popular library.

Q. What proportion of its works is comprised under the head of novels?

(Objected to as taking too wide a field and irrelevant.)

A. I cannot speak positively. It is quite large, and much larger than I like personally.

Q. Do you not keep statistics for the purpose of informing you as to the number of each class of works taken out by your subscribers?

A. Yes, but they can only be designated by numbers, and kept in the catalogue. I do not know whether other statistics are kept.

Q. Do you know that the large proportion of books taken out are novels and light literature?

A. Yes, I know so.

Q. I think in your Library you have arrangements for the accommodation of those of your Stockholders who may wish to meet and chat with their friends?

A. Yes, provided the sexes do not mix. We have conversation-rooms for males and females.

Q. You have chess-rooms also?

A. Yes, in the upper story.

Q. You take all the reviews and magazines without regard to sectarian views?

A. Yes, we design to take all of any prominence, without regard to sectarian views.

Q. And all the newspapers of any prominence?

A. We have the largest reading-room in the city, and take a large number of them.

Q. The magazines and newspapers are kept in the Library to be read by the Stockholders then?

A. O yes.

Q. Have you ever examined the question of the location

of the Library building proposed to be erected under Dr. Rush's will, in connection with such requisites of a library as by his will he seemed to consider proper?

A. No further than the first impression on my mind after reading his will. I have never had my attention turned to it, nor have I examined the location personally, but the impression of my mind at the time was, that it was a most remarkable and unsuitable location for such a building, and I think I have scarcely thought of it since till within a day or two.

March 1, 1872.

Mr. Evans' cross-examination continued.

Q. As you remember it, what sort of a library is contemplated in Dr. Rush's will, a student's library, or a popular one, such as the Mercantile?

(Objected to, as the construction of Dr. Rush's will is a matter for the Court, and not for the opinions of witnesses.

Mr. Junkin replies, that the witness has been called and examined in order to show that the location at Broad and Christian Streets is an improper one for the Library designed by Dr. Rush, based upon the witness's opinion as a supposed expert in connection with the Mercantile Library. In order, therefore, to ascertain the value of his opinion, it is necessary to know what his view of the character of the Library contemplated by Dr. Rush's will is.)

A. My recollection, at the time this was before the public, was decidedly that the Doctor contemplated this new library as more particularly for students and the better class of readers.

Q. Are not the objections which have weight with your mind against the location at Broad and Christian, very much stronger when applied to a popular library like the Mercantile than to such a library as is contemplated in Dr. Rush's will?

A. Yes.

Q. By the last Annual Report of the Mercantile Library, please state the number of shareholders, subscribers, bound volumes, pamphlets, greatest number of volumes circulated in one day, smallest number in one day, the average daily circulation, the greatest number of borrowers in one day, number of newspapers and reviews taken by the Library during the year 1871?

A. No. of shareholders was	11,574
" subscribers, ...	212
Making a total of	11,786
Bound volumes, ...	63,874
Pamphlets, ...	3,000
Greatest number of vols. in one day, .	1,671
Smallest number, ...	178
Average daily circulation, 298 days, .	638
Greatest number of borrowers in one day,	1,472
Newspapers, in this country and abroad, .	241
American reviews and magazines, . .	85
Foreign " " . . .	64

I take these figures from the Annual List, which I have every reason to believe correct. I think we have one of the finest, if not the finest, reading-rooms in the United States, very largely patronized by our own subscribers.

Q. Have you any means of knowing how many of your Stockholders and their friends visit the Library daily for the mere purpose of reading the reviews, newspapers, &c., as distinguished from those who take out books?

A. I know of no system yet adopted by which we could arrive at that with any certainty, but it is very largely in excess of those that borrow books. We have 24 chess-tables, open all day, and they are very freely used.

OLIVER EVANS.

Affirmed and subscribed before me,

RICHARD S. HUNTER, *Examiner.*

Tenth Meeting, February 2, 1872.

Present—Messrs. McMurtrie, Junkin, and Examiner.

Mr. Peter McCall, sworn.

Q. Are you a Director of the Library Company, and about how long have you been so?

A. I am so, and have been since the year 1856.

Q. The minutes of the Directors show that at a meeting, held June 3, 1869, Mr. Williams produced a copy of the will of Dr. Rush, and requested that the Board would take immediate steps to ascertain the decision of the Company upon the question of accepting the devises and bequests contained in Dr. Rush's will on the conditions therein contained. Please state whether Mr. Williams at that meeting, or subsequently, made any statements or requests as to certain articles which Dr. Rush had verbally directed to be given to his friends as remembrances, but as to which there were no directions in the will. And please state what was said by any one in his presence as to these articles.

A. I was present at the meeting referred to. I remember that Mr. Williams did at that meeting state the contents of Dr. Rush's will and that it would be desirable that a meeting of the Stockholders should be held as soon as possible, for the purpose of deciding whether to accept the devises and bequests of Dr. Rush's will. The reason, if I remember rightly, that he gave for desiring speedy action on the part of the Company, was that, if they accepted, he might listen to the suggestions in regard to the erection of the building, and act in harmony with them. The principal matter of conversation at that meeting was the general terms of the bequests of Dr. Rush's will. I remember also, that Mr. Williams did state that Dr. Rush had verbally directed certain articles to be given to his friends as remembrances, and that if the Library Company accepted, it would be for them to say whether they gave their assent to these gifts. I feel confident that he made no request of the

Directors in regard to these articles, nor was there any objection expressed by any one to their being given. In fact, I do not think there were any remarks made in regard to them. I never heard Mr. Williams subsequently make any statements with regard to these articles.

Q. The defendant has stated on page 11 of his Answer, "I have been met with dictation and resistance, direct and indirect, and a constant struggle to obtain the control of his estate." Do you know of any such dictation and resistance, and struggle to obtain such control?

A. I certainly do not know of any such dictation, nor of any resistance, direct or indirect, to Mr. Williams, unless it be the Company's opposition to his erecting the Library at Broad and Christian Streets, which has resulted in this suit. I certainly am not aware of any struggle on the part of the Library to obtain control of his estate.

Q. From what was said by Mr. Williams, or from any other circumstances whatever, did you ever have reason to believe that the Library Company were asked to give their consent to Mr. Williams distributing the effects which he stated Dr. Rush had verbally desired to be distributed, or that the Company either refused to give such consent or declined to express an opinion?

(Mr. Junkin objects to the foregoing questions and answers as irrelevant and inadmissible, and especially to the last question, because it is leading, irrelevant, and asks for the belief of the witness and not for his statements of facts.)

A. I feel very confident that the Library Company were not, at the meeting referred to, asked by Mr. Williams to give their consent to his distributing those effects. I have before said that, if I remember rightly, he stated that if the Company accepted, it would be for them to say whether or not they would give their assent. But I repeat that I never, then or on any other occasion, heard any such request made by Mr. Williams. The Company never, that I knew of, refused to give their consent. I do not remember that any opinion was expressed by the Directors at the meeting referred to, in regard to these articles. They certainly did

not decline to express their opinion, because their opinion was not asked for or invited.

Cross-examined.

Q. Mr. McCall, when did you leave this country, and when did you come back from Europe?

A. I went on the 15th of June, 1870, and returned on the 14th of August last.

Q. When was the last meeting of the Directors that you attended?

A. I think I have been at several meetings since my return.

P. McCALL.

Sworn and subscribed before me,
RICHARD S. HUNTER, *Examiner*.

Thirteenth Meeting, February 16, 1872.

Present—Messrs. RAWLE, JOHNSON, JUNKIN, and EXAMINER.

GEORGE M. ABBOT, sworn.

Q. Are you in the employ of the Library Company? and if so, for how long have you been so?

A. I am, and have been so since 24th June, 1863, as Assistant Librarian.

Q. What is the number of its shareholders and members, and of its annual subscribers?

A. The number of shareholders is 969, and we have no annual subscribers. Persons take out books by leaving a deposit of double the value and paying a certain sum per week. I suppose fifty people use the Library in this way in the course of the year.

Q. Of those who frequent the Library, what portion do so for consultation and study as compared with those who take out books?

A. I suppose about one hundred people come to the Library in the course of the day; of that number some six or seven come to consult books, and the rest of them take books away to read. I suppose there is on an average one student a year, *i. e.*, one person who comes day after day to study.

Q. Of those who come to take out books, what proportion are ladies?

A. I should think about forty out of every one hundred.

Q. State, as far as you can, the character of the greater portion of the books which are taken out.

A. Nine-tenths of the books taken out are the general literature of the day: novels, travels, biography, and periodicals.

Q. Have you a list of the present members? if so, please produce it and say how it was compiled.

A. This book contains the list of the present members. It was compiled from the ledger kept on the desk, wherein we enter the books taken out by the Stockholders.

(Mr. Rawle states that if desired he will produce the ledger, but it is a large volume, and now in use at the Library.)

The alterations and corrections in the list show the changes that have taken place by transfers of stock between May 2, 1870, when the list was compiled, and February 16, 1872.

Cross-examined.

Q. Of the Stockholders there are a large number who never come near the Library, are there not?

A. No, sir. I should not say so.

Q. Are there not a large number who very rarely come near the Library?

A. No.

Q. Amongst the hundred persons who frequent the Library daily, are there not some who come there much more frequently than others?

A. Yes, sir.

Q. About what proportion of the hundred would you call constant frequenters of the Library?

A. I should say two-thirds.

Q. Are good accommodations now afforded for the use of such persons as frequent the Library for the purpose of study?

A. Yes. I think so.

Q. You do not think better accommodations would secure a larger attendance of such persons?

A. I don't know that it would make any difference.

Q. Are any means now afforded by which persons desirous of making reference to large numbers of books, can refer to them without troubling the Librarian in each instance to procure for them the books?

A. We have nearly all the encyclopædias together in one case, and if a person wants to refer to them, it is only necessary to open the case; but the other works the Librarian has to get.

Q. Please state your age, and whether you had any previous experience of the practical workings of any other library.

A. I am twenty-five, and have never had any experience of any other library.

Q. Have you ever compared the accommodations afforded to students by this Library with the accommodations afforded by the other great libraries of the country?

A. No, sir.

Q. Are not many of the books, now placed in the second story, very inconvenient for access?

A. No.

Q. What proportion of the books are placed in the second story?

A. I suppose one-third, as well as I can judge.

Q. What is the width of the stairs which lead to this second story, and how many must be ascended in reaching it?

A. I don't know.

Q. Would you call the stairs by which you reach that second story an easy and convenient means of access to the books there placed?

(Mr. Rawle objects to this course of cross-examination as not being pertinent to anything in the cause, the question not being one of present sufficiency of accommodation and preservation of the Library; that, on the contrary, the insufficiency of the present building for the purpose is distinctly averred by the complainants in the sixth paragraph of their Bill.

Mr. Johnson replies, that the object of the cross-examination is to show that the manner in which the Library is now used results from its insufficient accommodation and is not evidence of the manner in which a Library affording proper accommodation would be used.)

A. It certainly is convenient, but not as easy as it might be.

Q. You do not think that better accommodations would tempt students to resort to the Library?

A. They might do so, but I have no means of knowing.

Q. Do you know whether the persons who frequent the Library reach it by walking or riding?

A. I don't know how they get there.

Q. Do any of the ladies of the family take out books in the name of their fathers or husbands?

A. They do.

Q. Is this the case to any considerable extent?

A. I think not to a considerable extent.

Q. Are there many shares of stock held by married ladies whose husbands also hold shares?

A. A few, not many.

Q. Of the constant frequenters of the Library, what proportion are ladies?

A. About 40 out of 100; but I have no means of knowing.

Q. Who has placed the residences opposite the names on the list of members that have been offered in evidence?

A. I have.

Q. From whence did you procure the addresses?

A. The greater number were taken from the Directory for 1871; others I know of myself; others were told me.

Q. When did you do this?

A. I think last October or November.

Q. Under instructions of the Librarian?

A. Yes, sir.

Q. For the purpose of being used in this suit, was it not?

A. I believe so; it was so long ago, I hardly remember.

Q. What instructions were given you as to the manner in which you should take the addresses, where two addresses appeared?

A. Do you mean where offices and residences both appeared (*by witness*)?

Q. Yes (*by Mr. Johnson*).

A. I took the residences.

Q. Did you think that was the proper way to make out the list?

A. I did.

Q. Why would you take the residences instead of the offices?

A. I don't know that I have any definite ideas on the subject; it seemed to me to be the right way.

(Mr. Johnson here hands witness a Directory of 1871, and asks him to follow him as he takes up and reads off some of the addresses in the list he has made out.)

Q. Turn to James M. Aertsen. Where is his residence?

A. Coulter near Green, Germantown; on the list it is Dock and Walnut, which is his place of business.

Q. Turn to A. J. Antelo. Don't you know Mr. Antelo resides on Walnut Street above Broad?

A. No, I do not.

Q. You knew he did not reside at 424 Walnut Street?

A. I knew nothing about it; I took the direction from the Directory.

Q. Turn to Edward Bedlock.

A. Tulpehocken and Morton, Germantown.

Q. He is down 715 Walnut Street, isn't he?

A. Yes, sir.

Q. Turn to George S. Bethell. Do you not know there are no residences at 520 Walnut Street?

A. Most of them are offices in that row; I don't know which 520 is.

Q. When you found in the Directory places which you knew must be offices and not residences, given as addresses, did you make any effort to obtain the residences from the Stockholders themselves, or in any other way?

A. I can't remember that I did.

Q. Turn to Thomas A. Biddle's address.

A. 1720 Spruce.

Q. He is put down 623 Walnut, is he not?

A. Yes, sir. (The witness here explains.) I desire to state that that list was as much made to help me in directing my notices of yearly payment, as for Mr. Rawle's use. When I began making it, I put down anything that came first, residence or office; as I got near the end, I got more particular to put down the residence.

(Mr. Rawle states that the book offered is only a link in the chain of evidence, and that he has prepared and will hereafter offer a list of the members with their residences in town and country, and places of business: the present list being offered for the purpose of proving the names of the Stockholders.

Mr. Johnson says, that inasmuch as it is admitted that the list heretofore given in evidence does not give the residences of the Stockholders correctly, he waives all further examination thereof.

Mr. Rawle does not admit this as thus broadly stated. On the contrary, he believes that in many, perhaps in most instances, the residences are correctly given.)

Q. What written data or record do you rely on in giving the statistics as to the number of Stockholders visiting the Library and the purpose for which they call?

A. I have no written data; it is merely supposition.

Re-examined.

By the word "supposition" do you mean guesswork, or conclusions arrived at from constant observation?

(Objected to as leading.)

A. I mean the latter; it is not guesswork; it is what I judge from seeing people use the Library.

Q. Are there not tables and writing materials abundantly furnished on the lower floor of the Library for the convenience of students?

A. There are. (Objected to as leading.)

Re-cross-examined.

Q. The seats are benches without backs, are they not?

A. There are but two benches, and plenty of chairs.

GEO. MAURICE ABBOT.

Sworn and subscribed before me,
RICHARD S. HUNTER, *Examiner.*

Fourteenth Meeting, Friday, March 1, 1872.

Present—Messrs. RAWLE, JUNKIN, and EXAMINER.

Lloyd P. Smith, Librarian, re-called.

Q. Of those who frequent the Library, what proportion do so for consultation and study, as compared with those who take out books?

A. We keep no records of those numbers. It is a mere matter of estimate; but I should think about seven or eight per cent. come for purposes of reference to the Library.

Q. Can you state about how many come, day after day, for continuous study?

A. Very few, indeed. Year by year, I should say not more than one on an average is a regular student.

Q. Of those who come to take out books, what proportion are ladies?

A. I should think about one-third.

Q. Of the books which were taken out, what is the character of the greater portion thereof?

A. The current literature of the day. I should think nine-tenths of the books taken out are current literature, that is, new books.

Cross-examined.

Q. Have you a reading-room in the Philadelphia Library?

A. We have no room called a reading-room. The Library is used to some extent as a reading-room.

Q. Are the daily papers and weekly papers, and the current reviews of the day, taken by the Library Company and kept for use by persons who visit the Library, or the subscribers and their friends?

A. They are only used in the shape of bound volumes, with some few exceptions. Four daily papers and many weekly and monthly periodicals are taken by the Library, but they are not, as a general thing, used by the members or others until they are bound. They are not kept on the table.

Q. Have you any chess-rooms and lecture-rooms?

A. No, sir.

Q. What facilities are there for a student who desires to consult a large number of books in the prosecution of any study?

A. There are, I consider, ample facilities in the shape of small and large tables for that purpose. I have never known the time when these tables were so crowded that any person was unable to make all the research he wanted.

Q. Are not a large number of books in galleries, the access to which is narrow and inconvenient?

A. Yes, sir.

Q. Can access be had to any of these upstairs by ladies?

A. No; but access is not usually given even to the books on the floor; the books are given out by the Librarian. Our Library differs from most others in this, that the books are not arranged on the shelves according to subjects; so that there is no object in any one going to a particular part of the Library for consultation of books on a particular subject.

The person applying must go to the Librarian, who gets the books from the different cases, and delivers them to him at the desk. In most large libraries—in the Astor Library for example—the books are arranged on the shelves by their subjects, so that a visitor desirous of seeing all the books upon botany, for example, would be allowed, if trustworthy, to go into the alcove, where the books on botany are kept, and take down the books from the shelves as he wanted them; and in the Astor Library a large number of students have this privilege. No such arrangement exists in the Philadelphia Library, nor ever has.

Q. What does the clerical force at the Library consist of, and what has it always consisted of, so far as you remember?

A. For the last 35 years, two; myself and one assistant. Before that, there was but one.

Q. Of how many volumes does the Library now consist?

A. About 95,000.

Q. In your answer to the questions just put to you by Mr. Rawle, you have been guided merely by a rough estimate or guess, without any careful data of any kind to guide you, have you not?

A. Entirely.

LLOYD P. SMITH.

Affirmed and subscribed before me,

RICHARD S. HUNTER, *Examiner*.

Fifteenth Meeting, March 8, 1872.

Present—Messrs. RAWLE, JUNKIN, JOHNSON, and EXAMINER.

ANGELO T. FREEDLEY, sworn.

Q. What is your occupation?

A. I am a member of the bar, and in Mr. Rawle's office.

Q. Have you a list of the present members of the Library Company, with their residences and places of business? If

so, produce it, and say where, when, and how it was prepared.

(Mr. Junkin objects to this testimony as irrelevant and incompetent.)

A. I produce such a list. (List produced and marked EXHIBIT 22.) It was prepared in Mr. Rawle's office, within the last four weeks. The names of the Stockholders were taken from a list prepared by Mr. Abbot, of the Library Company. The names were copied off in slips, and cut apart and arranged geographically. It was then found that Mr. Abbot had only sent a list of Stockholders who resided south of Chestnut Street. A complete list was then sent for, and Mr. Abbot furnished it in a brown book, I believe, given in evidence. The names were all recopied from this brown book, and arranged geographically. In the list thus prepared but one address to each Stockholder was given, business or otherwise. It was then determined to insert a double address for each Stockholder, business, and residence. The residences on these lists thus made out were then verified by the Directory for 1871. A map was then prepared from these lists, on which the business addresses were marked by red crosses and the residences by black crosses. While this was being prepared it was found that there were some eighty-three Stockholders whose residences were not known, and by personal inquiry and by letters sent the list of the unknown was subsequently reduced to ten, and the discovered addresses inserted in their proper places in the map. Mr. Rawle then examined the whole proceeding, and it was found that there were a number of names omitted from the list that were down in Mr. Abbot's book, probably on account of the fact that the list being cut into slips, some of the slips had not been copied, had become mingled with the copied slips, and both had been swept away together. These names, not being on the lists, of course had no place on the map. It was then determined to discard the former map entirely. The whole list was then carefully compared with Mr. Abbot's book, and all names that had previously been omitted were inserted into the copied list. Every name was

then searched for in the Directory for 1871, and the residences and business addresses again gone over and inserted on these lists. Those lists were then again copied, and from that copy the present map was made. This list is the result.

(Mr. Junkin objects to the whole of the foregoing as being in no sense testimony, and in every way incompetent and irrelevant.)

Q. Please produce the map you refer to.

A. I produce this map. (Map produced and marked EXHIBIT 23.)

Q. Please explain the manner in which it was prepared.

A. It was prepared by Mr. George Blight from the list just produced. The residences were marked with black dots and the business addresses by red dots. The map extends from Federal on the south, to Thompson on the north, and between the Delaware and Schuylkill rivers. The residents in Germantown are placed at the depot at Ninth and Green. Those residing in New Jersey are placed at the depot at Walnut Street wharf. The residents on the line of the North Pennsylvania Railroad are placed at the extreme lower corner of the map, at Front and Thompson. Those residing outside of the limits of this map are placed on the extreme north and south edges of the map. The residents on the line of the Westchester and Media Railroad, and those residing in West Philadelphia, are placed at Twenty-fourth and Chestnut, and those residing on the lines of the Pennsylvania Railroad and the Philadelphia and Trenton and New York Railroad are placed at Twenty-fourth and Market. All Stockholders living south of this city are placed at the depot of the Baltimore Railroad, at Broad and Washington Streets. Whenever there has been a doubt as to which railroad a Stockholder would take, care has been taken to place it at the site nearest to Broad and Christian Streets.

Q. You have spoken of the list (Exhibit 22) as having been gone over with the Directory, please state whether the addresses were also verified to a great degree by personal inquiry.

A. They were so verified, as to a great portion of them, by personal inquiry; and whenever it was discovered that they had a later address than that given in the Directory for 1871, it was inserted.

(Map (Exhibit 23) objected to by Mr. Junkin as irrelevant and incompetent.)

Cross-examined.

Q. Have you any knowledge of the great mass of these Stockholders and their residences, except as you find them from the Directory?

A. Yes, sir. The residences of some I know of my own knowledge. I can't tell what proportion or how many. I have also knowledge of residences by letters from the Stockholders, which are daily coming to the office of Mr. Rawle, and by the answers to personal inquiries.

Q. Your main dependence in making out this list of residences, was upon the Directory?

A. It was, as to a large number, dependent upon the Directory for 1871.

Q. Do you know that these persons are Stockholders of your own knowledge?

A. As to some 200, by the letters and answers to inquiries.

Q. To about how many does this apply?

A. That is one of my means of knowledge. The other way in which I know they are Stockholders is by the list prepared by Mr. Abbot, who is in the employ of the Library Company. I should suppose the letters and personal inquiries extended to about 200.

Q. Have you compared the residences of these alleged Stockholders as you find them in the Directory for 1871, and as they are in the Directory for 1870 or 1869, or for any previous year, to see what changes have taken place in their residences or places of business?

A. They have not been directly compared from the Directory, but it has been done in another form. The list prepared by Mr. Abbot contains the residences of the Stock-

holders as they appear in the Directory for 1870. These residences were compared with those in the list that has been produced, and all changes between 1870 and 1871 appear upon another list, and were inserted in the list that has been given in evidence. This was the only comparison between residences in Directories. This comparison was made not from a Directory, but from Exhibit 22, which contains the residences of the Stockholders for 1870, according to the Directory, as I understood them. I did not make out the list of residences from the Directory for 1870, as they appear in Mr. Abbot's list. I only know that he made the list from his saying so.

(Mr. Rawle desires the Examiner to note that the book referred to, which is now before the witness, is the one marked by the Examiner as referred to by the witness, Mr. Abbot, in his examination.)

Q. Please look at this book, and say whether apparently it contains the list of the Stockholders of the Library Company, with their residences since 1772.

A. It apparently contains a list of the Stockholders, without their residences, from 1772 to 1869.

ANGELO T. FREEDLEY.

Sworn and subscribed before me,
RICHARD S. HUNTER, *Examiner.*

GEORGE BLIGHT, Jr., sworn.

Q. What is your occupation?

A. I am a student-at-law in the office of Mr. Rawle.

Q. Please look at this map (Exhibit 23) and state by whom it was prepared, and how.

A. It was prepared by me, with Mr. Freedley's list as the basis.

No cross-examination.

GEORGE BLIGHT, JR.

Sworn and subscribed before me,
RICHARD S. HUNTER, *Examiner.*

EXHIBITS.

EXHIBIT No 1.

Charter of the Library Company.

John Penn, Thomas Penn, and Richard Penn, Esquires, true and absolute proprietaries of the province of Pennsylvania, and counties of Newcastle, Kent, and Sussex, upon Delaware: To all to whom these presents shall come, greeting:—

WHEREAS, Benjamin Franklin, Robert Grace, Anthony Nicholas, Thomas Cadwalader, William Coleman, Thomas Godfrey, Henry Pratt, Benjamin Paschall, Joseph Breintnall, John Jones, Jr., Samuel Hale, William Parsons, Nicholas Cassel, Francis Richardson, William Maugridge, David Bush, Thomas Hopkinson, Philip Syng, Jacob Duché, Evan Morgan, Joseph Stretch, John Paschall, Nicholas Scull, Thomas Green, Hugh Roberts, Rees Lloyd, John Roberts, Richard Standley, John Nicholas, John Sober, Charles Read, Daniel Harrison, James Morris, Thomas Shaw, John Read, Joshua Richey, James Hamilton, William Plumsted, John Bard, Samuel Morris, John Stamper, Samuel Norris, John Mifflin, John Langdale, Samuel Coates, Samuel Rhoads, Joseph King, Alexander Graydon, James Merrywether, Anthony Morris, Jr., Tobias Griscom, Charles Willing, Isaac Williams, William Allen, Joseph Peters, Richard Peters, Thomas Clay, Phineas Bond, Israel Pemberton, Jr., Robert Greenway, William Crosthwaite, William Callender, George Emlen, Jr., Isaiah Warner, Tench Francis, James Bingham, Charles Meredith, Samuel McCall, Hugh Davis, Amos Strettell, Benjamin Shoemaker, Joseph Hatton, Andrew Hamil-

ton, Thomas Bond, and William Peters, have, at a great expense, purchased a large and valuable collection of useful books, in order to erect a Library for the advancement of knowledge and literature in the City of Philadelphia; Now know ye, that we being truly sensible of the advantage that may accrue to the people of this Province by so useful an undertaking, and being willing to encourage the same, have given and granted, and by these presents, do, for us and our successors, give and grant, that the said Benjamin Franklin, Robert Grace, Anthony Nicholas, Thomas Cadwalader, William Coleman, Thomas Godfrey, Henry Pratt, Benjamin Paschall, Joseph Breintnall, John Jones, Jr., Samuel Hale, William Parsons, Nicholas Cassel, Francis Richardson, William Maugridge, David Bush, Thomas Hopkinson, Philip Syng, Jacob Duché, Evan Morgan, Joseph Stretch, John Paschall, Nicholas Scull, Thomas Green, Hugh Roberts, Rees Lloyd, John Roberts, Richard Standley, John Nicholas, John Sober, Charles Read, Daniel Harrison, James Morris, Thomas Shaw, John Read, Joshua Richey, James Hamilton, William Plumsted, John Bard, Samuel Morris, John Stamper, Samuel Norris, John Mifflin, John Langdale, Samuel Coates, Samuel Rhoads, Joseph King, Alexander Graydon, James Merrywether, Anthony Morris, Jr., Tobias Griscom, Charles Willing, Isaac Williams, William Allen, Joseph Peters, Richard Peters, Thomas Clay, Phineas Bond, Israel Pemberton, Jr., Robert Greenway, William Crosthwaite, William Callender, George Emlen, Jr., Isaiah Warner, Tench Francis, James Bingham, Charles Meredith, Samuel McCall, Hugh Davis, Amos Strettell, Benjamin Shoemaker, Joseph Hatton, Andrew Hamilton, Thomas Bond, and William Peters, and such other persons as shall hereafter be admitted or become members of *The Library Company of Philadelphia*, according to the laws and constitutions of the said Company, hereafter to be made, be and forever hereafter shall be by virtue of these presents, one body corporate and politic in deed by the name of The Library Company of Philadelphia; and that by the name

of The Library Company of Philadelphia, one body politic and corporate in deed and in name, we do for us, our heirs and successors, fully create, constitute, and confirm by these presents; and that by the name of *The Library Company of Philadelphia* they shall have perpetual succession; and that they, by the name of *The Library Company of Philadelphia*, be and at all times hereafter shall be, persons able and capable in law to have, hold, receive, and enjoy lands, tenements, rents, liberties, franchises, and hereditaments, in fee simple, or for term of life, lives, years, or otherwise; and also goods, chattels, and other things of what nature, kind, or quality soever. And also to give, grant, let, sell, or assign the same lands, tenements, hereditaments, goods, and chattels; and to do and execute all other things about the same, by the name aforesaid; and also, that they and their successors, by the name of *The Library Company of Philadelphia*, be and shall be forever hereafter persons able and capable in law to sue and be sued, implead and be impleaded, answer and be answered unto, defend and be defended, in all and any of the courts or other places, and before any judges, justices, and other persons whatsoever, in all manner of actions, suits, complaints, pleas, causes, and matters whatsoever, and of what nature and kind soever. And that it shall and may be lawful to and for the said *Library Company of Philadelphia* and their successors forever hereafter to have one common seal for their use in their affairs; and the same at their will to change and alter. And for the well ordering and governing the affairs of the said Company we do, for us, our heirs, and successors, further grant, That it shall and may be lawful for the said Company and their successors to assemble and meet together on the first Monday in May, in every year, and at such other times as there shall be occasion, at their Library or some other convenient place, due and public notice being given at least twenty days before the times of such meetings; not only of the day, hour, and place of such meeting, but of the cause thereof, and of the

matters to be transacted at such meeting. And that they, the said Company, or one-fourth part of them at least, being so met in person, or by proxy duly constituted in writing, shall have full power and authority, from time to time, to make, constitute, and establish such laws, statutes, orders, and constitutions as shall appear to them, or the major part of them, to be good and useful, honest and necessary, according to the best of their judgment and discretion, for the government, regulation, and direction of the Library Company and every member thereof; and for the appointing and regulating the election or nomination of Directors, Treasurer, Librarian, Secretary, and such and so many other officers as they shall think fit; and for limiting and appointing their trust and authority; and for the admitting new members; and to do all things concerning the government, estate, goods, lands, revenues, as also all the business and affairs of the said Company. All which laws, statutes, orders, and constitutions, so to be made as aforesaid, shall be binding on every member, and be, from time to time, inviolably observed, according to the tenor and effect of them, provided that they be not repugnant or contrary to the laws of England or this government. *Provided always*, That for the increase and preservation of the said Library, every member of the said Company shall and do pay into the hands of the said Company's Treasurer, for the time being, the sum of ten shillings, on the first Monday in May, in every year forever; and those who neglect so to do shall pay such greater sum or sums in lieu thereof, at such times, within twelve months then next following, as by the laws of the said Company shall be appointed. And that in default of these payments every delinquent shall forfeit his share in the books and estate of the said Company, and be no longer a member. In testimony whereof, we have caused the Great Seal of our said Province to be hereunto affixed. WITNESS, GEORGE THOMAS, Esq., Lieutenant-Governor and Commander-in-Chief of the said Province and Counties,

at Philadelphia, the 25th day of March, in the fifteenth year of the reign of our sovereign lord, King George the Second, and in the year of our Lord one thousand seven hundred and forty-two, by virtue of certain powers and authorities to him for this purpose (*inter alia*) granted by the said proprietaries.

GEORGE THOMAS.

EXHIBIT No. 2.

DEED. *James Logan's Executors to William Allen et al.* Printed in the Supplement to the Loganian Catalogue. Prout the same.

EXHIBIT No. 3.

ACT OF ASSEMBLY OF MARCH 31, 1792.

Printed in the Library Catalogue. Prout the same.

EXHIBIT No. 4.

RECEIPTS AND EXPENDITURES OF LIBRARY COMPANY OF PHILADELPHIA.

DR. For 1869–70.

Books and periodicals	$2936 70	
Binding	668 35	
		$3605 05
Salaries		2416 00
Expenses, repairs, & improvements		1178 51
New roof on Library building		1310 87
Insurance		175 00
Taxes		423 50
Balance		956 77
		$10,065 70

Cr.

Balance	$1221 23	
Ground rents	100 78	
Rents, Law Buildings	3042 50	
Rent, &c., Loganian Library	527 16	
Interest	134 50	
Annual payments	4981 39	
New share sold	40 00	
Duplicates sold	18 14	
		$10,065 70

Dr. For 1870–71.

Books and periodicals	$2930 38	
Binding	785 45	
	$3715 83	
Salaries	2416 00	
Expenses, repairs, & improvements	1687 96	
Insurance	175 00	
Taxes	422 50	
Balance	1575 59	
		$9992 88

Cr.

Balance	$956 77	
Ground rents	100 78	
Rents, Law Buildings	3091 67	
Rent, &c., Loganian Library	631 97	
Interest	117 51	
Annual payments	5008 38	
Duplicates sold	85 80	
		$9992 88

E. E.

Philadelphia, Nov. 25, 1871.

LLOYD P. SMITH,
Treasurer.

Exhibit No. 5.

Receipts and Payments of the Building Fund.

Cr.

Subscriptions paid	$16,722 00	
Bequest of Jos. Fisher, deceased	54,938 12	
		$71,660 12
Proceeds of shares sold		2,464
Interest on investm'ts	$20,286 51	
Rents of Locust Street property	1,586 90	
		21,873 41
Balance		500 41
		$96,497 94

Dr.

Cost of 12,500 U.S. 6's	$12,557 58	
" 6,500 " 5's	6,473 12	
		$19,030 70
Par cost of 2,350 Schyl. Nav. Bonds		2,350 00
Estimated value of shares Franklin Fire		4,500 00
Cost of real estate	$70,000 00	
Expenses of transfer	617 24	
		$70,617 24
		$96,497 94

E. E.

Philadelphia, April 25, 1871.

LLOYD P. SMITH,
Treasurer.

Exhibit No. 18*a*.

[At a special meeting of the Directors, April 24, 1869,] Messrs. Williams, Wharton, and Biddle were appointed a Committee to make inquiry in regard to the purchase of a lot for the erection of a fire-proof building.

EXHIBIT No. 18*b*.

[From the minutes of meeting of Directors, April 29, 1869,]

The Committee on a Lot reported that a resolution authorizing the purchase of a lot be presented to the members at their annual meeting on Monday next.

EXHIBIT No. 19.

[At a stated meeting of the members of the Library Company of Philadelphia, held on the first Monday (3d) of May, 1869, at the Hall of the Library building in Fifth Street, of which meeting notice had been given at least twenty days before the meeting by printed advertisement,] the following was offered and unanimously passed, William E. Whitman being the mover:—

Whereas, The present accommodations of the Library are entirely insufficient for the preservation of the present number of books without reference to any prospective increase, and the Building Fund has become very considerable in amount,

BE IT ENACTED BY THE LIBRARY COMPANY OF PHILADELPHIA, That the Directors shall have full power and authority, whenever they shall think proper, to purchase a lot in the City of Philadelphia, on the best terms they can procure, and to cause to be executed on behalf of the Company any instruments necessary for that purpose.

EXHIBIT No. 18*c*.

[At a meeting of the Directors, June 3, 1869,]

Mr. Williams laid on the table a certified copy of the will of the late Dr. James Rush, in which the Library was made, on certain conditions, the devisee and legatee of his large estate, Henry J. Williams being Executor. He requested that the Board would take immediate steps to ascertain

the decision of the Company upon the question of accepting the devises and bequests contained in Dr. Rush's will, on the conditions therein contained. Whereupon it was ordered, That a special meeting of the Library Company be held on the 29th inst., at 12 o'clock M., for the purpose of considering the propriety of accepting the devises and bequests contained in the will of the late Dr. James Rush, on the conditions therein expressed, and of applying for appropriate legislation to carry the same into effect.

The Secretary was directed to publish notice of this meeting in four of the principal newspapers of the city for at least twenty days before the time fixed for the same.

Messrs. Hare, McCall, and Wharton were appointed a Committee to examine the will of Dr. Rush, and report upon the legal and other points involved.

Exhibit No. 19*a*.

[At a meeting of the Directors, June 10, 1869,]

The Committee on the devise of Dr. Rush reported progress and requested permission to take the advice of counsel, which was granted.

Exhibit No. 22.

Opinion of Counsel, *by Henry Wharton, Esq., upon the Title to the Premises at the Corner of Broad and Christian Streets.*

No. 530 Walnut Street, *June* 10, 1869.

Dear Sir:—

I have examined the Brief of Title to the square of ground, at the corner of Broad and Christian Streets, sent by you to me through Mr. Castle, and I am of opinion that a good title in fee simple is thereby deduced to Charles Smith, subject to the lien of the debts of Mrs. Helmuth, a former owner, who has died within five years past. Whether

there be any such debts I cannot tell, as her executors have filed no account. The inventory in the Register's Office exhibited about forty thousand dollars of personal estate; and as Mrs. Helmuth was a lady advanced in years, it is not likely that her actual indebtedness at her death was at all considerable. It is therefore possible that a purchaser, intending to hold and not to resell, would run no risk. At the same time even those who have small personal liabilities are sometimes induced to enter into suretyships or contingent undertakings for others, which greatly impair their estates, the amount of which may not be ascertained until after death. This was the case of the late Mr. White, nearly the whole of whose property went to pay a liability which occurred after his death, upon a bond given by a trustee in which he was surety. (See White's Executors *v.* Commonwealth, 3 Wright 16.)

For these reasons it is usually considered that such a title is one which could not be forced on an unwilling buyer, and, as a consequence, one, I am obliged to say, which a trustee would not be technically justified in taking either for a mortgage or as an investment. Of this you must judge yourself.

The searches will be ready to-day, or to-morrow at the farthest. Most of the clerks spent yesterday at the political conventions, which accounts for the delay.

Yours, very respectfully,

HENRY WHARTON.

HENRY J. WILLIAMS, ESQ.

EXHIBIT NO. 23.

OPINION OF JUDGE STRONG.

HENRY J. WILLIAMS, ESQ.:—

DEAR SIR: I have examined the will of Dr. Rush at your request, and I am now prepared to answer the questions you propose.

1. I am of opinion that until the Philadelphia Library Company shall have accepted the provisions of the will respecting the devise for their benefit, they have no control over it or over your action as trustee. It is indeed desirable that you should know at an early day whether the Library Company intend to take advantage of the provisions of the will in their favor, for that knowledge might properly have some influence upon your action. If the building to be erected is not to be accepted on the conditions prescribed, and if it shall become your duty to found and endow another library, it may well be considered whether a smaller sum should not be devoted to the building and a larger to the endowment. But until the provisions of the will have been accepted by the Library Company, they have no right to interfere with the discretion vested in you as trustee.

2. I am also of opinion that the direction given on the fourth printed page of the will, to erect the building, and provide for its extension according to plans, directions, and specifications the testator should thereafter make or give; or, in case he should make or leave no such plans, &c., according to your best judgment, and to the views which had been expressed to you by him, taken in connection with the fourth section of the second codicil, fully justifies you in following the directions given to you verbally, within a month of Dr. Rush's decease. I assume of course that those directions relate only to the mode of erection, or to the place for erecting the buildings. I think an uncontrolled discretion is vested in you in these particulars. While I am not prepared to say that you are *legally bound* by any verbal directions given by Dr. Rush within a month of his death, you are at liberty to follow them, and considering the language of the will, they are entitled to weight in your consideration.

3. The surplus, remaining after the building shall have been erected and paid for, and after a sufficient fund shall have been set apart for the annuities, will belong, under the will, to the Library Company if they accept the gift on the

conditions prescribed. After reflection, I am of opinion that you are not required to expend the whole estate (except the annuity fund) on the building, whether such expenditure be necessary or not. It appears from the first clause of the second codicil that Dr. Rush contemplated a legitimate increase of the Library and payment of current expenses.

This is inconsistent with an expenditure of all the estate (except the annuity fund) in erecting the building. The annuities may not fall in for years, and if they do not, there will be no fund for current expenses, and none for the increase of the Library unless a portion of the estate remain unexpended beyond the annuity fund.

4. I have not before me the contract for the purchase of the lots on Christian and Carpenter Streets; but if the contract for the purchase was made by the direction of Dr. Rush, and was signed by the vendor, and a payment was made on account, it is binding upon you as Executor, and it is your duty to complete the purchase, and pay the consideration. I think such is your legal liability; but if not, certainly you are justified under the will in such a course, especially if you think it expedient.

5. The plan of Dr. Rush was to establish a branch of the Philadelphia Library, not to extinguish it, or to merge its existence in a new institution. It is not, I think, made a condition of the devise to the Company that they shall not retain their present building or procure some other for the convenience of the members and for the reception of such books as are intended to be excluded from the branch Library. Of course such other building cannot be placed upon the lot upon which the building for the *branch* shall be erected; nor can the funds derived from Dr. Rush's estate be appropriated for any other purposes than those specified in his will. They cannot be used for the purchase or erection of such other building, or for the purchase of such books, or for the current expenses of that part of the Library of the Company.

6. I have already said that the will confides to you a

most absolute discretion in the choice of the lot for the building. I am confident a court of equity will not control you in that choice, especially if you choose in harmony with the wishes of the testator verbally expressed. A court of equity does not interfere with a discretion reposed, except in cases of clear abuse, where the court can conclude that the donee of a power is acting in fraud of it. But when, as in your case, the trustee acts in accordance with his own best judgment, and, in so doing, follows the positive directions of the testator, it would be altogether unprecedented for a court to interfere and substitute its discretion for that invoked by the will. The only objection now made to the lot at Christian and Carpenter is, so far as I know, that it is remote from the situation which the Library Company thinks most suitable. It was not their judgment, however, upon which Dr. Rush relied, and it is by no means certain that the lot will not prove within a few years more conveniently located than any other. The Institution is intended to be lasting, designated not merely for the present, but for the future.

I am, very respectfully, yours,

W. STRONG.

June 15, 1869.

Since writing the above, I have seen the contract for the lot between Christian and Carpenter Streets, and, in view of it, I repeat what I said above. I am of opinion that it is your duty to complete the purchase.

W. STRONG.

June 16, 1869.

EXHIBIT No. 24.

Mr. Williams to Dr. Norris.

MY DEAR DOCTOR:—

I address this note to you as the oldest of the Directors of the Library, because I do not intend to be present at your meeting on Thursday next, nor to take any part in inducing

the decision which they are then to make in reference to Dr. Rush's magnificent gift. Indeed the coolness, and I may say indifference, with which it has been received, almost leads me to hope that it may be rejected, and the Ridgway Library be established wholly independent of the Philadelphia Library. I inclose you the opinion of Judge Strong which I beg you will lay before the Board. It was given in answer to written questions, of which I also send a copy, without any argument, suggestion, or intimation of my wishes or opinions, and as I believe it to be correct, I shall be governed by it.

I certainly did expect that I should have been cordially aided in the administration of this trust by the Board of Directors, and that they would have taken pleasure in assisting me to carry out the instructions of one whom I thought was a benefactor of the Library Company. I have been disappointed; and I shall now probably have to depend entirely upon myself; for I shall not consider the Library Company in any way interested in Dr. Rush's estate until the members accept in the terms of his will the conditions imposed by it. If this is declined or delayed I shall be compelled to proceed without reference to the wishes or opinions of the Board, and exercise my best judgment in the construction of the building entirely independent of them. I shall, no doubt, make many mistakes, and imperfectly accomplish the work before me; but I will do the best I can, and if I fail for want of the counsel and advice of the Board it will be because they have been unwilling to put themselves in a condition to give it.

With regard to the claim of the heirs of Dr. Rush to the surplus of his estate beyond the annuity fund, if the Board choose to raise their hopes by intimating a doubt as to their own right to it, I have nothing to say. The provision made for some of them is so slight that they will probably eagerly catch at any proper means to increase it. I am trustee for those who are entitled to that surplus, and if the Board sug-

gest the idea that it belongs to the heirs, I will not lay a straw in the way to prevent them from recovering it.

But if Judge Strong is correct in his opinion (and I am satisfied that he is) the Library Company, who are strangers to this devise and bequest until they accept them, cannot until then have any right to ask a court to determine the disposition of a fund in which they have no interest, and the very existence of which is not yet ascertained and cannot be until the building is completed; and I certainly will not aid them in any such attempt.

If they take the gift I will be happy to consult with them. If they do not, I shall claim the right to proceed according to Dr. Rush's instructions and the discretion with which he has intrusted me.

Very truly and sincerely yours,

HENRY J. WILLIAMS.

June 22, 1869.

EXHIBIT, No. 9*c*.

[At a meeting of the Directors, June 24, 1869.]

The Committee on the Rush legacy reported that they had consulted Messrs. Meredith, Biddle, and McMurtrie as counsel on various questions arising under Dr. Rush's will, but had received a written opinion on one point only, as follows:—

"We are of opinion that the time for the Library Company to accept the devise under the will of Dr. James Rush has not arrived. Until the executor shall have completed a building and tendered a conveyance, the Company could do no more than agree to accept at a future time; and we think such an agreement should not be made until the real position of the affairs and the plan of the executor are better ascertained and the consequences can be considered.

"We think, therefore, that it is expedient to postpone (for the present at least) any action by the Company in re-

ference to the will, other than the observance of the provisions which they are required to observe, to avoid disabling themselves from accepting in accordance with the terms of the will.

WM. M. MEREDITH,
GEORGE W. BIDDLE,
R. C. McMURTRIE."

The Librarian reported that a number of proxies had been given to him to be used in accordance with the instructions of the Board; whereupon the Librarian was directed to vote such proxies in favor of the following Resolution:—

That the Directors be and they are hereby authorized to accept the bequests and devises contained in Dr. Rush's will, if and when they shall deem it advisable so to do, and be authorized to procure any legislation necessary for the purpose.

Judge Sharswood was selected to preside at the Stockholders' meeting.

EXHIBIT No. 10.

Minutes of Library Company, June 29, 1869.

Peter McCall, Esq., offered the following resolution:—

Resolved, That the Directors be and they are hereby authorized to accept the bequests and devises contained in the will of Dr. Rush, if and when they shall deem it advisable so to do, and be authorized to procure any legislation necessary for the purpose.

General W. A. Stokes moved to strike out all after the word Resolved, and substitute the following:—

Resolved, That the Stockholders of the Library Company of Philadelphia have heard with pleasure the munificent bequest of the late Dr. James Rush;

That they desire that the Directors of the Library Com-

pany of Philadelphia shall signify to Henry J. Williams, Esq., their acceptance of the same with, however, the expression of the wish that if it be within the power of Mr. Williams, the new building shall be placed within the limits first designated in the will of Dr. Rush.

William M. Tilghman, Esq., moved to amend the amendment by striking out all after the word Resolved and substituting the following:—

1. That it is inexpedient at this time to take any action upon the question of accepting the devises and bequests to this Company contained in the will of the late Dr. James Rush upon the conditions therein expressed.

2. That whenever, in the opinion of counsel, the proper time shall have arrived for action upon such questions, the Directors are hereby requested to submit it to a meeting of the Stockholders specially called for its consideration.

3. That until such question be decided no new shares of stock in the Company shall be issued.

A general debate ensued, and, finally, on motion of Frederick Fraley, Esq., it was resolved to postpone for the present the consideration of the foregoing resolutions, and to refer them to a committee to be appointed by the chair, composed of six Members and six Directors, to report at an adjourned meeting.

The chair appointed Frederick Fraley, Edward King, Joseph Carson, William W. Longstreth, Benjamin V. Marsh, and William P. Tatham on the part of the Stockholders, and Peter McCall, J. I. Clark Hare, George W. Norris, S. Morris Waln, David Lewis, and Henry Wharton on the part of the Directors.

EXHIBIT No. 25.

Letter of Frederick Fraley of July 7th, 1869.

PHILADELPHIA, July 7, 1869.

MY DEAR SIR:—

At a meeting of the Committee of Stockholders and Directors of the Philadelphia Library Company held yesterday, Judge King, Mr. ~~H.~~ P. Tatham, and myself were appointed a sub-committee for the purpose of conferring with you on the following points connected with the will of the late Dr. James Rush.

First. The present value of the estate, real and personal, and the annual income thereof.

Second. The site and plan of the building proposed to be erected for library purposes and the estimated cost thereof.

Third. The probable amount of the annual income of the residue of the estate.

Will you have the kindness to designate some time and place for a personal interview with the Committee for such a conference; as it is hoped that it will lead to a satisfactory settlement of the questions referred to the Committee.

With great regard, I am, truly yours,

FREDERICK FRALEY,
Chairman.

HENRY J. WILLIAMS, ESQ.,
CHESTNUT HILL.

EXHIBIT No. 26.

F. Fraley, Esq., Chairman, &c.

MY DEAR SIR:—

I have received your letter of the 7th inst., and have great pleasure in answering your inquiries, so far as is in my power.

1. The present value of Dr. Rush's estate, as appraised by Mr. Thomas Craven, who has been for many years Dr. Rush's

agent, is $1,067,000, not including the furniture of his house or those articles which have been specifically bequeathed.

2. The net income of the estate as represented to me by Mr. Craven for the year ending June 1, 1869, is a little above $40,000.

3. The site of the building proposed to be erected for library purposes will be on the square bounded by Broad, Christian, Thirteenth, and Carpenter Streets, containing 300 feet on Broad Street, and being in depth 527 feet on Christian and Carpenter Streets. This lot was bought by Dr. Rush in his lifetime for $130,000. The deed has been made to the executor for the uses of the will; a considerable sum has been paid on account of the purchase-money, and the balance secured to the seller by a mortgage on the lot.

4. The building will be of the Greek Doric order, with a row of columns in front, and will extend from 80 to 100 feet on Broad Street, and be about 140 to 160 feet in depth, with an opening in the centre from 20 to 25 feet in width for light and air. The front will have two wings on Broad Street, of from 20 to 30 feet each. These measurements were suggested to me by Dr. Rush, and they accord with my present views. I am at liberty, however, to change them, and shall freely do so if in my judgment it shall be necessary. The front building will contain good-sized rooms without any large or lofty halls or lecture-rooms, and the whole remaining interior will be divided in such a way as to hold the greatest number of books; to be well lighted and so arranged as to be easy and convenient of access. The material of the building will be either granite or white Ohio stone.

5. Of the cost of such a building I can give the Committee no idea; I have had neither plans nor estimates of any kind made.

6. Not knowing the cost of the building, I cannot say what will be the amount of the residue of the estate or of its income.

I believe I have replied to all the inquiries of the Committee; I have done this in writing because I think it better there should be neither mistake nor misunderstanding in

relation to any information I may be called upon to give. Misapprehension is a frequent result of oral conferences; if, however, the Committee desire a personal interview, I will cheerfully meet them at their convenience.

It is my intention to fulfil to the utmost of my power, and in the most economical way, the directions and views given and expressed to me by Dr. Rush; but I feel that in so doing I must depend upon my own judgment and resources, for I do not expect to seek for sympathy, aid, or assistance in my difficult task, from the Library Company or its Directors, who, so far from expressing any gratitude for the magnificent gift of Dr. Rush, have not after the interval of more than a month been able to decide that it is worth their acceptance. I have already expressed my views on this subject in a letter addressed to Dr. Norris, one of the Board of Directors.

I remain with great respect and regard,

Very truly yours,

HENRY J. WILLIAMS.

July 12, 1869.

EXHIBIT No. 27.

Letter of Frederick Fraley of August 4, 1869.

No. 417 WALNUT STREET, PHILADELPHIA, August 4, 1869.

Henry J. Williams, Esq.

DEAR SIR:—

The Sub-Committee of the Stockholders and Directors of the Philadelphia Library Company, have received your letter of the 12th of July, 1869, communicating certain information requested by them respecting the bequest made to the Company by the will of the late Dr. James Rush.

From this communication we learn, first, that the present cash value of the estate passing under the will amounts to the sum of $1,067,000; second, that it is your present intention to erect the proposed Library Building on the lot of ground situate on Broad and Carpenter Streets; third, that although you have not procured or adopted any technical

plan of the proposed structure, yet you have furnished us with certain general views in regard thereto entertained by you, which leave no doubt as to the character and form of the building you contemplate erecting, and which enable us to form an approximate estimate of the cost of such a structure.

As the financial question has a direct connection with some of the suggestions we are about submitting to you, we propose making it the first subject of consideration.

You estimate the whole fund at . .		$1,067,000
From which deduct Inheritance tax,		
State and National . . .	106,700	
Expenses of the Trust commissions, &c.	50,000	
Fund to be reserved for annuities at the average yield of the estate .	200,000	
Cost of the lot of ground . . .	130,000	
Cost of building and inclosure . .	550,000	
		1,036,700
Estimated remainder		$30,300

Indeed the first clause of the additional codicil to the will indicates the opinion of Dr. Rush, that after setting apart a sum sufficient to secure the annuities bequeathed, the whole of the remainder of the estate would be required for the cost of the lot and erection of the building.

Whilst the building would be in progress there would of course be some surplus income, but it seems doubtful to us, whether, when completed and furnished, there would remain a fund sufficient for the payment of taxes and current expenses before the annuities fall in. To provide for these purposes during the interval, it would be necessary to draw upon the existing resources of the Philadelphia Library.

On this head we should apprehend no sort of difficulty, if the site selected and the building erected thereon would serve as a complete substitute for the present Library building, so that the income of the Company might be increased by revenue drawn from the sale of its present location.

But if, on the contrary, the new building should be placed so far from the mass of the readers of the Library as to require for their convenience a subsidiary Library building in a central situation, the necessary increase of expenses might present a serious difficulty in conforming to the wishes of Dr. Rush.

These considerations only have, we believe, caused any embarrassment to the Library Company, and not at all any want of appreciation of the munificence of the bequest or of the generosity of the testator.

We are thus again brought to the question of site, which is indeed the only one that presents any real difficulty. For if, with your concurrence, a site of the dimensions and within the limits prescribed by the original will of Dr. Rush could be selected, we believe that the Library Company would cheerfully accept all the conditions of the will and codicils, and, if necessary, contribute towards the purchase of such a site any excess of cost beyond the $130,000, the value of the lot on which you propose placing the building.

With the object of ascertaining whether any plan can be adopted leading to an harmonious concert of action between the Library Company and yourself in the solution of this sole point of difference, we respectfully ask your reply to the following inquiries:—

First. Would you be disposed to change the site proposed by you for the Library building, for another of the dimensions and within the limits prescribed by Dr. Rush in his original will, provided that you could be satisfied, in the most certain and unequivocal manner, that the great majority of the members of the Library Company are opposed to the proposed site, on the ground of its being alike inconvenient to themselves and to such of the public as may desire to avail themselves of the use of the Library?

Second. Would you be willing to abandon the proposed site and adopt one of the dimensions and within the limits proposed by Dr. Rush in his original will, if the Library Company or its friends would contribute from their

own proper funds, for the purchase of such a lot, a sum equal to the difference between the purchase of such a lot and the cost price of the lot on which you propose erecting the Library building?

Third. If neither of these propositions should meet your assent, would you be willing to arrange for the erection of a Library building at Broad and Carpenter Streets, of such a size as would hold such parts of the Philadelphia Library as consist of books of reference and study, and such works as would be mainly used and consulted by students, said building to be at a cost which would leave a sum, say of $300,000, of the principal of the estate for the endowment and support, under the care of the Philadelphia Library Company, of this section of the Library; thus leaving to the Company the whole of its present property and Building Fund for the erection of a building and the support of a library conducted on the same principles as those on which the Philadelphia Library is now conducted?

If some arrangement of this kind could be effected, the difficulty arising from the proposed site might be partially obviated.

We shall be greatly obliged by your reply in writing, which it will be our duty to submit to the Committee, of which we are members, and ultimately to the Library Company, with whom will rest the final determination of the whole subject.

Respectfully yours,

F. FRALEY,

Chairman Sub-Committee.

EXHIBIT No. 28.

Mr. Williams to Mr. Fraley.

MY DEAR SIR:—

I have received your letter of the 4th inst., and beg leave in reply to say, that as to your estimate of the cost of the Library building and the surplus which will remain in my hands after its erection, I do not mean to make any remarks.

If your calculations satisfy the Committee, it is all you can desire, and without in any way admitting their accuracy, I have no wish to disturb your conclusions.

With regard to the site of the building, I thought I had, on more than one occasion, expressed myself with sufficient clearness, but I will again repeat that it is my intention to place it on the square at the corner of Broad and Christian Streets. I deem that situation most expedient under all the circumstances of the case, for I consider its distance from the centre of the city as far outweighed by its other advantages, and I have the consolation of knowing that this decision is in entire accordance with the wishes of the testator who selected and purchased this lot for this very purpose in his lifetime. It is his money that I am to spend, and I do not find in his will anything authorizing me to be governed by the opinions of other persons in opposition to his judgment as well as to my own. I should think in so doing I was violating the trust he has reposed in me. I, therefore, answer your first and second questions decidedly in the negative.

As to the third question, I hope the Committee will excuse me for declining to enter into any stipulations or agreements, expressed or implied, in reference to the size or the cost of the Library building. It is required by the "additional codicil" to be not only large enough to contain their [the Library Company's] present books, but also their probable increase for many years to come; and I am authorized (if I find it necessary) to expend the whole remainder of the estate to accomplish this object. I shall, of course, strive to do so as economically as I can, but I must be allowed to retain the full and free exercise of the direction with which Dr. Rush has invested me, without any other restrictions than those contained in his will.

With great respect and regard, I remain truly yours,

HENRY J. WILLIAMS.

FRED. FRALEY, ESQ.,
Chairman Sub. Com.

Aug. 6th, 1869, 712 Walnut Street.

Exhibit No. 11.

[At an adjourned meeting of the Company, Oct. 5, 1869, the Hon. George Sharswood in the chair, Wm. E. Whitman, Secretary,]

The Chairman appointed Messrs. Tilghman and Hutchinson tellers, who reported a quorum.

The report of the Joint Committee on the Rush legacy was read by the Chairman, F. Fraley, Esq., and a minority report by Wm. P. Tatham, Esq., signed by himself only.

A general debate ensued, and finally, on motion of Mr. Fraley, the four resolutions reported by the Committee, together with an amendment offered by Henry M. Phillips, were referred to a stock vote to be taken on the 19th inst., between 10 and 4 o'clock.

It was ordered that a list of the Stockholders be posted up in a conspicuous place in the Library.

On motion the meeting adjourned to Thursday, the 21st inst., to receive the Report of the Hon. Edward King and James S. Biddle, Esq., who were appointed by the Chair tellers to receive the vote on the Resolutions and to report the same to the said adjourned meeting.

Exhibit No. ~~12a.~~ 20

Resolutions upon which a Vote of the Members of the Library Company of Philadelphia, will be taken on Tuesday, the 19th of October, 1869, *at the Library Rooms, between* 10 *A.M. and* 4 *P.M. The Resolutions will be voted on separately.*

Members are requested to write Aye or No against each resolution as they may prefer to vote.

No. 1. *Resolved,* That the Stockholders of the Library Company of Philadelphia do hereby accept the legacy of Dr. James Rush according to the terms expressed in his Will.

No. 2. *Resolved*, That so much of the present collection of books and other property of the Company as may by the Directors be deemed expedient, shall be retained in the present or some other central position for general use and circulation.

No. 3. *Resolved*, That a Committee to consist of three Stockholders and three Directors, shall be appointed for the purpose of consulting and advising with the Executor of Dr. Rush in carrying out the provisions of the Will, in procuring such legislation as may be needed, and also for carrying into effect the second resolution, by taking measures for securing the erection of a fire-proof building for the reception of those parts of the Library so to be retained at such time and in such place as said Committee may determine.

No. 4. *Resolved*, That a copy of the foregoing resolutions be transmitted to Henry J. Williams, Esq., the Executor of Dr. James Rush, as the acceptance of this Company of the bequest made by his Will, and that the letter transmitting the same shall acknowledge the high appreciation by the Company of the confidence reposed in them by Dr. Rush, and of their cordial willingness to unite in carrying out, in the most beneficial way, his philanthropic intentions.

[The above resolutions are those reported by the Joint Committee of Stockholders and Directors. The following additional resolution is offered by Hon. Henry M. Phillips.]

No. 5. *Resolved*, That the acceptance of the Stockholders of the Library Company of Philadelphia is upon the express provision that so much of the present collection of books and other property of the Company as may by the Directors be deemed expedient, shall be retained in the present or some other central position for general use and circulation.

Exhibit No. 21*a*.

Circular of Stockholders.

The Stockholders of the Library Company of Philadelphia are required, on the 19th of October, to vote on certain resolutions proposed at a meeting of Stockholders, held on the 6th instant.

We beg to call your attention to what we deem the material questions. Every one recognizes the importance of an adequate building for the Library, and also of an endowment for the purchase of books, especially those of the character recommended by Dr. Rush.

If this Company shall fail to accept the provisions of the will, the only consequence will be that a building will be erected, endowed, and administered by persons not constituting the Directors of our Company. Every one will have the same use of the building and books that he can have, if this Company accepts the trust. And unless we are prepared to remove our whole collection to Broad and Christian Streets, we can perceive no one motive for an acceptance. For we must still maintain two establishments; one at which our members can resort, and the other as a receptacle for books not intended for ordinary use, to be kept at the new building, which is to be in a remote place suitable for students to retire to, but so entirely out of the range of common people, as to practically destroy such use of it as we have been accustomed to.

The resolutions, numbers 1, 2, 3, do appear to imply that our acceptance is conditional on our retention of the liberty to maintain *a* Library at another and convenient place.

But when it was proposed to vary these so far as to make that an express condition of acceptance, it was not agreed to, and we therefore call your attention to the fifth resolution, and ask you to vote for that, if you deem the right to select a location distinct from Broad and Christian, for any purposes, important, and you should think it desirable to accept the trust, before required to do so under the directions of the will.

We call attention to the fact, which no one will dispute, that our right to maintain a separate building, after acceptance, cannot depend on the assent of the executor, but on the meaning of the will. He has no power either to impose or release the obligations there defined.

There are other considerations we deem most weighty, in determining whether to accept this trust now. The will gives to the executor the absolute right to select the location and to construct the building, and this discretion has been exercised by selecting Broad and Christian Streets as the *most suitable* spot in the city for the purpose.

When he has completed the building, the whole details of which he has bound to retain under his discretion, and which discretion he cannot trammel for the future by any agreement, even if he desires to do so, the will directs him to convey it to the Company as trustees, when they are to assume certain obligations. If they violate them, the building will pass into other hands, and with it all books, if there shall be any, which have been purchased with the funds coming from Dr. Rush.

There are some of these conditions which deserve consideration, but might be submitted to as the price of a liberal endowment fund, if that were certain to exist. Such as, 1st, A prohibition to increase the number of our shareholders, which may result in the elective franchise being monopolized by a few who think they see some advantage in controlling this corporation and its funds. 2d. A restriction on the qualification of Directors, which may result in great inconvenience. 3d. The doubt whether the testator has not made it imperative that if we accept, we shall use his building as the sole depositary for our books. That he expected it is pretty certain. Whether he makes it obligatory is a serious question; and this cannot be waived or released. But there are both express and implied conditions, which we greatly fear may be ruinous, of which it is absolutely out of the power of any man now to decide the effect, see-

ing they depend on a state of facts as they will exist many years hence.

The will certainly in terms directs the whole of the estate, except a fund adequate to pay annuities, to be expended in the purchase of the lot and erection of the building.

There are those who think this is not the meaning of the will, and we hope they may be right. But we fear that as the words are express, so does it appear to have been the final intention of the testator. If this be so, there will remain a fund yielding about $10,000 per annum, which the Company will begin to receive when and as the annuitants die, to maintain the expenses of this splendid edifice, and purchase books. If it be not so, there will remain so much as is not expended in building. The futility of estimated expenses of such an undertaking need not be remarked on.

This Company are now asked to assume these obligations, certain in liability, with absolute uncertainty of means, and also a duty to publish at least five editions of 500 each, of all Dr. Rush's works, and keep them for sale at cost.

We respectfully ask, should we, the representatives of the charitable contributions of several generations that have built up the present Library, hazard these unnecessarily, by assuming these obligations before the time that we are required to decide, and before we can possibly know wherewithal we shall perform them. And for what are we asked to do this? Not to save property from being lost to the cause of literature, but to prevent the existence of a distinct institution under a separate management.

This is the worst that can happen, for all that the Executor asks can be attained without this peril. It is the advice of our Directors that he wishes, and that only; he does not agree to be governed by it. He could not do so, for he, as trustee, must act on his own discretion, and how far he will regard these wishes may be inferred from the attention paid to the universal and earnest entreaties on the subject of location.

These questions are grave, and should be considered carefully.

In asking you to vote negatively on the first resolution, we are doing what the Directors, in conformity with the opinion of counsel, advised at the meeting of June 29th, 1869. A copy of the resolution then offered by Mr. McCall, on behalf of the Directors, and of the opinion of counsel upon which it was based, are hereto annexed.

The effect of such a vote is not to bind the Company ultimately to reject the trust, but only to leave the question open till the proper time, viz., when the building having been erected and offered, we can ascertain if there are any funds left to maintain it, and what are the conditions and obligations we will assume by acceptance.

If you think there ought to be an immediate acceptance, then we ask you to consider whether you are prepared to agree that all the books of the Company shall be kept at Broad and Christian Streets; if not, and you wish to reserve the right to have some of them kept at a place which is accessible, then we ask you to vote for the fifth resolution.

To sum up—

We would advise that you vote upon the first *four* resolutions, No, and upon the *fifth*, Aye.

The result of this will be, that if contrary to our expectations, a majority should vote to accept the legacy, then the fifth resolution, if carried, will make the acceptance *conditional* on the right of the Library Company to control the location of its own collection of books. On the other hand, if a majority vote to reject the legacy, the passage of the fifth resolution will be merely harmless.

Proxies can be sent to either of the following persons, viz., James S. Biddle, 234 South Third Street; William M. Tilghman, 417 Walnut Street; Richard C. McMurtrie, 416 Walnut Street; Henry M. Phillips, 126 South Sixth Street; S. Kingston McCay, 429 Walnut Street. The proxies should be *witnessed*, as well as signed, and the persons above named,

on receiving them, are to be considered as expressly instructed to vote in the manner above expressed.

PHILADELPHIA, October 12, 1869.

H. PRATT McKEAN,
EDW. S. WHELEN,
J. A. McCREA,
HENRY M. PHILLIPS,
JAS. S. BIDDLE,
JOHN SAMUEL,
S. KINGSTON McCAY,
THOS. McEUEN,
JAS. M. AERTSEN,
R. RUNDLE SMITH,
WM. M. TILGHMAN,
R. C. McMURTRIE,
J. D. RODNEY.

Opinion of Counsel.

We are of opinion that the time for the Library Company to accept the devise under the will of Dr. James Rush, has not arrived. Until the executor shall have completed a building, and tendered a conveyance, the Company could do no more than to agree to accept at a future time; and we think such an agreement should not be made, until the real position of the affair, and the plans of the executor, are better ascertained, and the consequences considered.

We think, therefore, that it is expedient to postpone, for the present at least, any action by the Company in reference to the will, other than the observance of those provisions which they are required to observe to avoid disabling themselves from accepting in accordance with the terms of the will.

W. M. MEREDITH,
R. C. McMURTRIE,
GEO. W. BIDDLE.

Resolution of June 29th, 1869, offered by Peter McCall, Esq., on behalf of the Directors.

Resolved, That the Directors of the Library be and they are hereby authorized to accept the bequests and devises in Dr. Rush's will, if and when they shall deem it advisable so to do, and be authorized to procure any legislation necessary for the purpose.

EXHIBIT No. 21*b*.

CIRCULAR OF STOCKHOLDERS.

To the Shareholders of the Library Company of Philadelphia:

The undersigned, members on behalf of the Shareholders, of a Joint Committee of Directors and Shareholders, appointed on the subject of the bequest and legacy of the late Dr. James Rush, respectfully ask your attention to a few matters connected with the question of the acceptance or rejection of the munificent donation of the testator.

The value of the property bequeathed to the Library equals nearly one million one hundred thousand dollars; and from its nature, we believe that it will considerably exceed that value, before it will become necessary to transmute it into money. We think that all will agree, that there is no institution more wanting in our large and beautiful city than a great public library, in which may be collected for public use those works of literature and science so necessary for intellectual development. In the magnificent donation of Dr. Rush an opportunity is afforded to accomplish an object so much to be desired.

The reasons which should lead to the rejection of such a legacy, and thus defeat this great public good, ought certainly to be clear, grave, and imperative. The Joint Committee of Directors and Shareholders has given those assigned a long, most anxious, and careful scrutiny; and has come to the conclusion that none of them separately, nor all combined, are adequate to such a result.

The principal objection to the acceptance of the legacy arises from the proposed site of the "Ridgway Branch" of the Library. It is true that the Committee would have preferred a more central site for the building. But the Executor of Dr. Rush, both from the expressed wishes of the testator during his life, as well as from his own judgment of the suitableness of the selected site, is indisposed to change it. The Committee did not enter into the consideration, whether the proposed site, situated as it is on the finest avenue of Philadelphia, might not at an early future be surrounded with the finest public and private structures, and thus become most eligible; because a simple solution of the difficulty presented itself. This was to keep up and maintain our present Library on its present site, retaining in it all books of general circulation; transferring to the Ridgway Branch only such works as are sought for by students and profounder scholars; and, if necessary, erecting a fireproof building on our present, or some equally convenient, site, for the reception and distribution of works of general circulation.

Among the other objections to the legacy is one that the Library Company of Philadelphia cannot, consistently with the will of Dr. Rush, retain any portion of their books in their present building. None of the objections taken seem to us more unsound than this. The Library Company of Philadelphia, its property and estate, are totally different things from the "Ridgway Branch of the Philadelphia Library." Dr. Rush distinctly provides for their always being kept separate and apart. The accounts of the "Ridgway Branch of the Library Company of Philadelphia" are by the will to be kept separate and distinct from "all other accounts of said Library Company." The books to be purchased for it are to be of solid literary character. In the clause providing for the change of trustees, in case of abuse of the trust, the books and furniture belonging to the Ridgway Branch of the Library are, together with the other estate, to be transferred to the new trustee. Without keep-

ing the estate, property, books, &c., of the Ridgway Branch of the Library apart, the will could not be carried into effect. In the opinion of the Committee, after the acceptance of Dr. Rush's legacy, the Library Company will continue in as full right of its property as it possessed before; and in no respect will it be mingled with, or embarrassed by, the property of the trust.

It is also urged, that the time has not yet arrived for the acceptance or refusal of the legacy, but that such election is only required to be made when the Library Building, intended by the Executor to be placed under the care of the Library Company of Philadelphia, is erected and completed. This position was not regarded by the Joint Committee as well founded. It is true that as part of the duties of his office, the Executor is directed to erect a Library Building, to be placed, when finished, in the care and control of the Company. But if the Library Company of Philadelphia should "omit or decline" the execution of the trusts of the will, then the Executor is constituted a trustee to "*found* and *endow* a Public Library, entirely distinct from the Philadelphia Library, to be named and called the Ridgway Library." The building he would erect for the Ridgway Library would necessarily be a different one, in cost and extent, from one erected for the Ridgway Branch of the Philadelphia Library. Surely the Executor, having such a double duty to perform, cannot, under such circumstances, be required to expend the bulk of the estate in a building for the occupation of the Philadelphia Library, without knowing whether, when such building is completed, the Philadelphia Library will accept it, and enter into the execution of the trust. The Joint Committee, therefore, were of opinion that the Executor had the legal and moral right at once to know what position the Philadelphia Library intended to assume, in regard to the acceptance or refusal of the trust, so as to enable him to carry out the alternative duty imposed on him by the will, in the event of a refusal.

One or two other objections started may be disposed of in a few words. It is said that under the language of the will books might be introduced of questionable morality. But as no books can be placed on our shelves, except by the consent and with the approbation of the Directors, the high social and moral character of these gentlemen is a guarantee against such an imaginative danger.

There is nothing of practical value in the notion that the Library Company may incur pecuniary liabilities, in accepting the simple execution of the trusts of the will. The estate is immense, and will come into our hands free from debts or liabilities. The only obligation the Library Company will assume in accepting this trust, will be the obligation to execute its duties with fidelity. Your Committee therefore advise, that the first *four* resolutions, submitted to the Stockholders, be voted on *affirmatively*.

The fifth resolution, if adopted, amounts to a rejection of the legacy, and was, it seems to us, so intended. Members, therefore, favorable to accepting the legacy, will of course write *No* opposite the *last* resolution.

As the vote on the 19th inst. is intended to bring out the unbiased opinions of the members, the Directors of the Company and their Librarian decline to take proxies, and those who have already signed proxies to vote at the meetings of the Company are requested—if not able to go to the polls themselves—to sign the new proxies sent to them, and if in favor of acceptance, to forward the same by mail to either of the undersigned.

FRED'K FRALEY,
No. 417 Walnut Street.

EDWARD KING,
No. 315 S. Fifteenth Street.

BENJ'N V. MARSH,
No. 309 Market Street.

WILLIAM W. LONGSTRETH,
No. 2017 Chestnut Street.

JOSEPH CARSON, M.D.,
No. 1120 Spruce Street.

EXHIBIT No. 29.

[At an adjourned meeting of the Company, October 21, 1869, Eli K. Price in the Chair,]

Judge King read the following report:—

Philadelphia Library, October 19.

The undersigned, appointed tellers under a resolution adopted by the Stockholders of the Library Company of Philadelphia, October 5, 1869, to receive and count the votes cast for and against four resolutions reported by the Joint Committee of Stockholders and Directors, and a fifth resolution offered by Hon. Henry M. Phillips, the said votes to be taken on the 19th day of October, 1869, between the hours of 10 A.M. and 4 P.M., and report the result, hereby report that they have attended to that duty and do hereby certify as follows:—

That 597 members voted in person or by proxy.

That 298 votes were cast in favor of the first resolution and 293 against it.

That 256 votes were cast in favor of the second resolution and 301 against it.

That 213 votes were cast in favor of the third resolution and 362 votes were cast against it.

That 268 votes were cast in favor of the fourth resolution and that 293 votes were cast against it.

That 259 votes were cast in favor of the fifth resolution and that 316 votes were cast against it.

And we do further report, that the first resolution, to wit: "*Resolved*, That the Stockholders of the Library Company of Philadelphia, do hereby accept the legacy of Doctor James Rush according to the terms expressed in his will," was agreed to, and that the remaining resolutions were not agreed to.

In witness whereof, we have hereunto set our hands the day and year first above written.

EDWARD KING,
JAS. S. BIDDLE.

Whereupon the chairman announced that the first resolution was agreed to and the other resolutions were lost.

Hon. J. Ross Snowden offered the following resolutions:—

Whereas, A majority of the Stockholders of the Library Company of Philadelphia has accepted, by a stock-vote on the 19th inst., the legacy of the late Dr. James Rush according to the terms expressed in his will, therefore

Resolved, That the resolution adopted by the said vote be entered on the minutes of the Library Company as the acceptance by said Company of the munificent and philanthropic bequest of Dr. Rush.

Resolved, That a Committee to consist of three Stockholders and three Directors, be appointed to co-operate with the Executor of Dr. Rush in carrying into effect the provisions of said will.

Resolved, That the early construction of a fire-proof building to contain the valuable books, papers, and other treasures of the Company, as well as those which shall hereafter be obtained, is an object of the highest importance and demands the earnest and immediate attention of the Company and of the Executor of Dr. Rush.

Resolved, That a copy of the resolution adopted by a vote of the Stockholders, together with those preceding, be sent to Henry J. Williams, Esq., the Executor of Dr. Rush.

These resolutions were put to the vote and lost.

The following offered by Mr. Fraley was then adopted:—

Resolved, That the further consideration of the bequest of Dr. James Rush be postponed, and that a Committee consisting of five members and the Directors be appointed, who shall take the subject into consideration and shall recommend to the members at a meeting to be called by the Directors such action as they may deem expedient or necessary.

The chairman appointed on behalf of the Stockholders, Frederick Fraley, Henry M. Phillips, Edward King, James S. Biddle, and J. Dickinson Logan.

EXHIBIT No. 6.

[At a meeting of the Directors, November 4, 1869,] Messrs. Wharton, McCall, and Waln were appointed a committee to inquire into the advisability of investing a portion of the Building Fund in a lot of ground.

EXHIBIT No. 7.

[At a meeting of the Directors, December 2, 1869,]

The undersigned, a Committee appointed to inquire into the advisability of the investment of a portion of the building fund of the Library Company in the purchase of a lot of ground, respectfully report:—

That they have entered into a negotiation with Mr. John Rice, for the purchase of a lot of ground on the north side of Locust and west side of Juniper Street, containing 110 feet in front on Locust Street, and about 185 feet in depth, for a sum not to exceed $60,000; and with Mr. John Livezey, for the purchase of a lot of ground adjoining the last to the north on Juniper Street, 100 feet in depth, to a small court by about 54 feet on Juniper Street, for the sum of $10,000, subject to a ground rent of $17 a year.

That they believe these prices to be quite reasonable, considering the situation of the property, and that an additional advantage in the purchase will be, that the ground is now covered with a number of small buildings which were stated to yield a rental of $3000 a year, and from which probably still more could be obtained; by reason of which the property can be carried without expense to the Library, till either it can be used for building purposes or disposed of at a profit.

That your Committee regard the situation of the property as admirably adapted for the purposes of a public building such as the Library; and that even if it should never be used for that purpose, the price at which it can be obtained

would be an excellent investment of the Building Fund at the present time.

Your Committee therefore recommend the purchase of the properties above mentioned for the prices stated, and that they be authorized to enter into the necessary agreements for the purpose. All of which is respectfully submitted.

(Signed) HENRY WHARTON,
P. McCALL,
S. MORRIS WALN.

EXHIBIT No. 8.

[Meeting of the Directors, January 6, 1870,]

"A letter from Henry J. Williams, Esq., having been read, tendering his resignation as a member of this Board, the following resolutions were unanimously agreed to:—

"*Resolved*, That the Board have heard with great regret Mr. Williams' intention of resigning, and that in view of their great esteem and regard for him, and from their grateful remembrance of the highly important and valuable services he has rendered to the institution, they desire that he will reconsider his purpose of leaving the Board with which he has been so long associated, and gratify them by withdrawing his letter of resignation.

"*Resolved*, That the Secretary communicate the above to Mr. Williams."

"The Committee on the purchase of a lot of ground reported the payment of $6819.77 to John Livezey, out of the Building Fund for two houses on Juniper street, subject to mortgage."

EXHIBIT No. 30.

Mr. Williams to Mr. Whitman.

MY DEAR MR. WHITMAN:—

I have received the resolution of the Board of Directors of the Philadelphia Library Company which you were good enough to send me, and beg leave to express my grateful thanks for the kind expressions it contains. I came to the conclusion that it would be better for me to leave the Board after careful and deliberate consideration, and I still adhere to that opinion. There are so many doubts, differences, and difficulties among the members in relation to the bequest of Dr. Rush, its extent, construction, and value, that my presence would only render discussion embarrassing to the Board, and therefore far from agreeable to myself; besides, I learn from the public prints that the Shareholders rejected a resolution directing a copy of their acceptance of Dr. Rush's bequest, with an acknowledgment of their high appreciation of the confidence he had reposed in them and of their cordial willingness to carry out in the most beneficial way his philanthropic intentions, to be communicated to his executor.

Now I do not think it desirable for me to retain a seat at the Board as the representative of those Shareholders, and I must therefore repeat my request that my resignation may be accepted.

I beg you to convey to the Board my best wishes for the prosperity of the Library, and for the welfare and happiness of every individual member.

Very truly yours,
HENRY J. WILLIAMS.

WM. E. WHITMAN, ESQ.,
Secretary.

January 11, 1870.

Exhibit No. 14.

Certified copy of an Act of Assembly authorizing the Library Company to take the devise of Dr. James Rush in trust.

AN ACT

Relative to the Ridgway Branch of the Philadelphia Library.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That the Library Company of Philadelphia be and they are hereby authorized to act as trustees for the Ridgway Branch of the Philadelphia Library and the trusts pertaining thereto under the last will and codicils of James Rush, late of the city of Philadelphia, Doctor of Medicine, upon the conditions and provisions therein contained, without limitation as to the yearly value or income of the said trust estate, but in such manner that the real and personal property of the Company, including such books, pictures, statues, and other works of literature and art as now are or shall hereafter be held by them, in their own right or on any other of different trusts, shall be in no wise affected thereby, but shall remain and be under their own entire and exclusive control and disposition; and the said Company are hereby empowered after acceptance of this act by the members of the said Company to apply from time to time to the Court of Common Pleas for the City and County of Philadelphia, for such further amendments to the charter of the Company as may be necessary to carry into effect the conditions and provisions of the said will and codicils in accordance with the directions of this act.

B. B. STRANG,
Speaker of the House of Representatives.

CHARLES H. STINSON,
Speaker of the Senate.

Approved the twenty-third day of February, Anno Domini one thousand eight hundred and seventy.

JNO. W. GEARY.

EXHIBIT No. 31.

Mr. Williams to Mr. Whitman.

MY DEAR SIR:—

I have received your note of the 10th inst., enclosing a copy of the Act of Assembly of 23d February, 1870, and a form of a proxy to be used at a meeting of the Library Company on the 25th of this month.

The course which the Stockholders have taken with reference to Dr. Rush's will, has led me to the conclusion that it will be most expedient that I should follow as completely as possible the directions of his will without taking any part in the proceedings of the Library Company.

It was this opinion that induced me to resign my position as a Director, and I have as yet seen no reason to change it.

Yours, very respectfully,
HENRY J. WILLIAMS.

WILLIAM E. WHITMAN, Esq.
CHESTNUT HILL, May 12, 1870.

EXHIBIT No. 15.

[At an adjourned meeting of the Company, May 25, 1870,]
Hon. Eli K. Price in the Chair.

Messrs. Armstrong and Tilghman were appointed Tellers, who reported that a quorum was present.

The minutes of the last meeting were read and adopted.

Mr. Fraley, on behalf of the Joint Committee, reported that the following Act of Assembly had been signed by the Governor. (Prout the same, *supra* page 145.)

Also that certain amendments to the Charter should be applied for in pursuance of said act.

Henry M. Phillips, Esq., offered the following resolutions, all of which were adopted unanimously:—

Resolved, That the Library Company of Philadelphia do accept the provisions of the Act of General Assembly of

the Commonwealth, approved the 23d day of February, 1870, entitled an Act relative to the Ridgway Branch of the Philadelphia Library.

Resolved, That the Directors be requested to apply to the Court of Common Pleas of Philadelphia County for the following Amendments to the Charter of the Company:—

Proposed Amendments to the Charter of the Library Company of Philadelphia.

I. The Library Company of Philadelphia shall hereafter be held and taken to possess all such powers and capacities as may be necessary to enable them to act as trustees under the will of the late Dr. James Rush, according to the provisions of an Act of the General Assembly of the Commonwealth, approved on the 23d day of February, one thousand eight hundred and seventy (1870), entitled "An Act relative to the Ridgway Branch of the Philadelphia Library."

II. So long as the Library Company shall act as such trustees, they shall do so under the following limitations and conditions.

First. Not more than one-fourth of the Directors of the Library shall belong to any one of the three learned professions of law, theology, or medicine; but this shall not operate so as to exclude from re-election any of those who were members of the Board at the time of the death of the said Dr. James Rush.

Second. The number of shares in the Library shall be limited to those actually issued at the time of the death of Dr. Rush; but the managers by their by-laws shall have the authority to allow any respectable persons depositing an amount and paying an annual sum to be fixed by the Board of Managers, to have the full and free use of the Library as completely as if they were Shareholders.

Third. The Library shall not connect themselves with any other body, corporate or politic.

Resolved, That in assuming the administration of this munificent endowment the Library Company desire both to record their high appreciation of the confidence reposed in them by Dr. Rush, and to express on behalf of the community at large a proper acknowledgment of the great benefit which the testator designed for the advancement of literature and science in this city.

Resolved, That the Chairman be requested to communicate to Henry J. Williams, Esq., these resolutions, and to convey to him at the same time the thanks of the Library Company for his long and useful services as a Director and the warm interest he has always taken in their welfare.

Resolved, That the Joint Committee be discharged from the further consideration of the subject.

EXHIBIT No. 18*d*.

[At an adjourned meeting, June 9, 1870,]

Mr. Wharton submitted the following Resolution, which was unanimously agreed to.

Resolved, That the Secretary be directed to affix the corporate seal to a proper memorial to the Court of Common Pleas for the City and County of Philadelphia, praying for the allowance of the amendments to the Charter of the Company, proposed at the adjourned special meeting of the Company, held on the 25th May last, and that the counsel of the Company be requested to prepare and present such a memorial.

EXHIBIT No. 32.

Minutes of September 1, 1870.

Messrs. A. Biddle and H. C. Lea were appointed a Committee to confer with the Commissioners of Public Buildings in regard to a site for this Library on Penn Square.

Exhibit No. 16.

Certified Copy of Amendments to Charter (*see Exhibit* 15) *and Petition.*

To the Honorable the Court of Common Pleas for the City and County of Philadelphia:—

The memorial of the Library Company of Philadelphia respectfully represents to your Honorable Court, that by an Act of Assembly, entitled "An Act relative to the Ridgway Branch of the Philadelphia Library," approved the twenty-third day of February, A. D. 1870, it was enacted, "That the Library Company of Philadelphia be, and they are hereby authorized to act as Trustees for the Ridgway Branch of the Philadelphia Library and the trusts pertaining thereto, under the last will and codicils of James Rush, late of the City of Philadelphia, Doctor of Medicine, upon the conditions and provisions therein contained, without limitation as to the yearly value or income of the said trust estate, but in such manner that the real and personal property of the Company, including such books, pictures, statues, and other works of literature and art as now are, or shall hereafter be, held by them in their own right, or on any other or different trusts, shall be in no wise affected thereby, but shall remain and be under their entire and exclusive control and disposition; and the said Company are hereby empowered, after acceptance of this act by the members of the said Company, to apply from time to time to the Court of Common Pleas for the City and County of Philadelphia, for such further amendments to the charter of the Company as may be necessary to carry into effect the conditions and provisions of the said will and codicils in accordance with the directions of this act."

That at a meeting of the members of the said Company, duly convened on the twenty-fifth day of May, A. D. 1870, it was resolved, "That the Library Company of Philadelphia do accept the provisions of the Act of the General

Assembly of the Commonwealth, approved the twenty-third day of February, 1870, entitled 'An Act relative to the Ridgway Branch of the Philadelphia Library.'

"*Resolved*, That the Directors be requested to apply to the Court of Common Pleas of Philadelphia County for the following amendments to the charter of the Company," to wit:—

(Prout the same, *supra* p. 147.)

Your petitioners therefore pray that the said amendments may be allowed to be made to the charter of the said Company and form a part thereof, according to the Act of Assembly in such case made and provided.

W. E. WHITMAN, [SEAL.]
Secretary.

City and County of Philadelphia, ss.

Be it remembered, That at a Court of Common Pleas, held at Philadelphia, on the thirty-first day of October, A. D. 1870, the above and foregoing amendments to the charter of "The Library Company of Philadelphia" were presented to the said court for its approval. Whereupon the court ordered the same to be filed in the Prothonotary's Office of said court, and that public notice be given of the application agreeably to the provisions of the Act of Assembly in such case made and provided. And now, to wit: December 10, A. D. 1870, due proof having been exhibited of the publication of notice of said application agreeably to the order of the court, and that no cause to the contrary being shown, and it appearing to the court that the said amendments and alterations are and will be lawful and beneficial, on motion of R. C. McMurtrie, Esquire, it is ordered and decreed that the said alterations, improvements, and amendments shall be deemed and taken to be a part of the instrument upon which said corporation was formed and established to all intents and purposes as if the same had been originally made part thereof: And it is further ordered,

that the said amendments be recorded in the office for recording of deeds in and for said county.

[SEAL.] Witness my hand and the seal of the said court this sixth day of March, A. D. 1871.

R. DONAGAN,
Prothonotary.

City of Philadelphia, ss:

I, John A. Houseman, Recorder of Deeds, &c., for the said city, do hereby certify that the within and foregoing is a true and correct copy of an instrument of writing found of record in my office, in Miscellaneous Book J. A. H., No. 1, page 145.

[SEAL.] Witness my hand and seal of office, this 30th day of March, A. D. 1871.

J. A. HOUSEMAN,
Recorder.

Per M. MYERS.

EXHIBIT No. 17.

[At a meeting of the Directors, Dec. 10th, 1870,]

The Committee on the Rush Legacy, appointed June 3d, 1869, reported that in accordance with the resolution of the Board, June 9th, 1870, the counsel of the Company had prepared and presented to the Court of Common Pleas a memorial praying for amendments to the charter of the Company, and that the said court had duly approved of the amendments submitted, and that the same now constitute part of the charter of the Company as required by the will of Dr. Rush, whereupon the following resolution was adopted:—

Resolved, That the Secretary be directed to inform Henry J. Williams, Esq., the Executor of the will of Dr. Rush, of the amendments of the charter of the Company, and to no-

tify him that the Company are now ready to undertake the performance of their duties as Trustees for the Ridgway Branch of the Library.

The following preamble and resolutions were further adopted:—

Whereas, At a meeting of the members of the Library Company held on the 29th day of June, 1869, Mr. Williams, as Executor of Dr. Rush, expressed an intention of erecting the Library Building contemplated by the provisions of the said will on the square of ground on the corner of Broad and Christian Streets in this city.

Now further Resolved, That it is the opinion of the Directors of this Company that the removal of their collection of books to the site thus proposed would, under the circumstances, be destructive of the interests of the Library and contrary to the wishes of a vast majority of the Stockholders.

Resolved, That the Directors take this, as the first opportunity since the Company has been authorized by law to accept the trusts of Dr. Rush's will, to express to Mr. Williams their earnest hope and request that he will reconsider his said intention of building on the site named.

Resolved, That Dr. Willing, Judge Hare, and Mr. Lea be appointed a committee to communicate these resolutions to Mr. Williams and to confer with him on the subject.

It was further Resolved, That the counsel of the Company be consulted with regard to the present rights and duties of the Library Company of Philadelphia as Trustees for the Ridgway Branch of the Library.

Exhibit No. 33.

Letter from Mr. Whitman to Mr. Williams, enclosing Copy of Petition to Common Pleas.

Library Company of Philadelphia,
Fifth Street below Chestnut,
Philadelphia, Dec. 12, 1870.

Henry J. Williams, Esq.,

My Dear Sir: I have been directed by the Directors of the Library to transmit to you the enclosed copy of the petition to the Court of Common Pleas, the resolutions of the Company at a meeting held on the 25th May last, the resolution of the Directors passed on June 9, 1870, and the decree of the court on the above-mentioned petition.

Yours, very respectfully,

W. E. WHITMAN,
Sec'y Philada. Library Co.

Exhibit No. 34.

Letter of Dr. Charles Willing, of Dec. 13, 1870.

916 Spruce Street, December 13, 1870.

Dear Sir:—

I take this opportunity of enclosing a copy of resolutions passed by the Board of Directors of the Philadelphia Library Company, and to ask when it will suit your convenience to give the Committee an interview to confer with you upon the subject to which they refer.

I remain with great respect, &c.,

CHARLES WILLING.

Henry J. Williams, Esq.,
712 Walnut Street.

EXHIBIT No. 35.

Letter of Mr. Williams to Dr. Willing.

MY DEAR SIR:—

I shall be happy to meet the gentlemen named in your note either as a committee or as individuals, but I must say that I feel it impossible to make any change in the location of the Library upon the lot selected by Dr. Rush himself. It seems to me a sacred duty to carry out the clearly and repeatedly expressed wishes of the testator, and to perform what he undoubtedly understood to be a fundamental condition of his bequest. I moreover fully believe that, a few years hence, the position selected by him for his Library Building will be in all respects admirably suited to the objects the Doctor had in view, and which he has expressed in his will.

I shall be in town on Monday, and will meet the Committee, if they desire it, at one o'clock, on that day, or on any other Monday they may name. I mention the hour and the day only to save trouble, and will accommodate myself to their wishes. If my office, 712 Walnut Street, is more convenient, I will be happy to see them there, or at any other place they may name. With sentiments of great esteem and regard, believe me, &c.

HENRY J. WILLIAMS.

DR. CH. WILLING.
December 17, 1870.

EXHIBIT No. 36.

MY DEAR SIR:—

I acknowledge the receipt of your note of the 12th inst., enclosing a copy of the petition of the Library Company to the Court of Common Pleas and their decree thereon.

As I understand the will of Dr. Rush, the trusts for the benefit of the Library Company only arise when the build-

ing is completed and ready to be delivered to them. At that time the question of their compliance with the conditions prescribed by the testator's will will have been carefully considered and determined.

Until then his Executor does not think it either necessary or proper for him to form or express any opinion in relation to the course pursued by the Company, to which he has always been designedly a stranger.

I trouble you with this solely to prevent my silence from being considered as an assent to or approval of the petition or decree.

Very respectfully, &c.,
HENRY J. WILLIAMS.

WILLIAM E. WHITMAN, Esq.,
Secretary P. L. Co.

December 21, 1870.

EXHIBIT No. 37.

Letter of Dr. Charles Willing of December 22, 1870.

916 SPRUCE STREET, December 22, 1870.

MY DEAR SIR:—

In enclosing the reply of the Committee to your note of the 17th, I would desire to say that the Committee regards that note as your formal reply to the resolutions of the Board of Directors. If this is not in accordance with your intention in writing that note, pray address another to the Committee which may replace the former one.

I remain with great respect, &c.,
(Signed) CHAS. WILLING.

HENRY J. WILLIAMS, Esq.,
712 Walnut Street.

The letter of Mr. Williams to Dr. Willing, of December 30, 1870, is printed on page 29 of defendant's answer.

EXHIBIT No. 18*e*.

[At a meeting of the Directors, January 5, 1871,]

The letter of Mr. Williams to Dr. Willing, of December 30, 1870, was read. Prout the same, printed in defendant's answer, p. 29.

"The Committee was then discharged, but the Board considering that the latter part of Mr. Williams' letter should receive some immediate reply, instructed the Secretary to inform Mr. Williams that the members of the Board, as far as in their power, were ready to give their consent to carrying out the wishes of Dr. Rush as expressed in the unsigned papers referred to in Mr. Williams' letter, of which they have now for the first time heard, in such way as counsel should advise; and that they would have expressed their consent previously had they been sufficiently acquainted with the facts mentioned by Mr. Williams."

———

EXHIBIT No. 38.

Letter of Wm. E. Whitman of January 12, 1871.

PHILADELPHIA, January 12, 1871.

HENRY J. WILLIAMS, Esq.,

DEAR SIR: Your letter of December 30, addressed to the Chairman of our Committee, Dr. Willing, was laid before the Board of Directors of the Library at their meeting on the 5th inst.

I am requested by the Directors to express to you the regret with which they have learned from your letter of the 30th ult. that there has been any misunderstanding about the effects which Dr. Rush desired to be disposed of in the manner you mention.

The impression on the minds of the Directors was that you did intend to follow out the wishes of Dr. Rush in

relation to those articles, and that your allusion to the subject was a notice that you would do so.

As you desire some formal action of the Board, I am directed to say that they are ready to give their consent in such manner as counsel may advise, and that they would have expressed this readiness sooner had they been advised of the facts.

I am, sir, very respectfully yours,

W. E. WHITMAN,

Secretary Library Co. of Philadelphia.

EXHIBIT No. 39.

Letter of Mr. Williams to Mr. Whitman.

MY DEAR SIR:—

You are under a misapprehension in saying in your note of the 12th inst. that I desired some formal action of the Board in relation to the fulfilment of the verbal directions of Dr. Rush, as to the remembrances to be given to his friends. I certainly did not ask for it in my letter of the 30th Dec. 1870, nor do I at all desire it at this late day. It would have been at the time of Dr. Rush's death most gladly received, and I supposed that upon simply stating, which I am sure I did very distinctly, that it only required the approval of the Board to enable me to comply with his wishes, that approval would have been cordially and instantly given. I know I waited for it long and anxiously, and was exceedingly surprised and disappointed at not obtaining it. I never imagined that the Board intended to leave me to bear not only the *pecuniary* but also the *moral* responsibility of disposing of his effects, of which they were to be ultimately the residuary legatees, when they perfectly well knew I had no legal right to do so. Their assent, without releasing from the former, which I was aware was not in

their power, would have relieved me from the latter, which I did not choose to assume.

I do not see what construction I could put upon their silence, except that they declined acceding to my request, nor do I know how I could have "advised them of the facts" more fully than I had done by my statement at the Board.

Under these circumstances I informed Dr. Rush's family that, although I could not carry out his instructions as he designed, yet I could dispose of these articles at private sale, and that they could have all or any of them at their appraised values. Some of them accepted this offer, and have received and paid for their intended gifts—others declined it.

The matter has thus been settled for about a year, and I not only do not desire, but I am entirely unwilling, to disturb it. It must rest as it is. I have, however, the consolation of knowing that it was not from any omission of mine that Dr. Rush's kind intentions have been frustrated.

My object in referring to this subject in my last letter was only to inform the Board of the course which the want of action on their part, formal or informal, had compelled me to pursue.

Very truly and respectfully,

HENRY J. WILLIAMS.

W. E. WHITMAN, Esq., *Secretary.*

CHESTNUT HILL, Jan. 16, 1871.

EXHIBIT No. 40.

List of the Residences and Business Addresses of the Stockholders of The Library Company of Philadelphia.

FEBRUARY 16, 1872.

TASKER STREET.

Hannah Morris		520
Henry Morris		520

GERMAN STREET.

Thomas Latimer	430 Library	223

LOMBARD STREET.

Francis G. Smith	37 S. Front	226
Thomas R. Stroud	150 S. 4th	corner of Broad

BIRNEY PLACE, WEST PHILADELPHIA.

N. B. Browne	329 Chestnut	4207
William C. Henszey	737 Market	4211

PINE STREET.

Jesse R. Burden		238
St. Peter's Church		300
William Evans	613 Market	325
Earle Shinn	247 S. 3d	518
Lydia L. Smith		621
Francis Sims, M.D.		709
James S. Newbold	126 S. 2d	719
Lewis C. Madeira		723
Mary N. Johnson		727
Philip H. Law	615 Walnut	735
Mary Williamson		804

PINE STREET.

Jesse Williamson's Estate, used by Mrs. Mary Williamson		804
William V. Anderson's Estate, used by Mrs. Mary Williamson		804
Isaac P. Morris		826
William Wurts' Estate, used by John R. White	316 Walnut	903
Joseph L. Wilson		925
Charles P. Dawson		1114
Samuel Jackson's Estate		1316
René La Roche		1330
Reynold Thomas	218 S. Del. Av	1412
John Penington's Estate		1414
Edward Penington	127 S. 7th	1414
Hannah M. Davis, care of Edward Penington		1414
John W. Wright		1432
Joseph S. Lewis	111 Walnut	1504
Elizabeth Swift, used by D. R. King	125 S. 3d	1512
Robert C. Grier's Estate, used by Aubrey H. Smith	S. 5th	1516
Aubrey H. Smith	S. 5th	1516
Thomas Dillard's Estate	108 S. Front	1526
Charles Chauncey	202 S. 5th	1533
Albert F. Damon	232 S. Del. av	1606
William Platt's Estate, care of Charles Platt	232 Walnut	1702
Samuel Wilcocks	224 Walnut	1704
Mrs. Fanny E. Brooks		1708
Henry Reed's Estate	627 Walnut	1710
Mrs. Elizabeth T. Brooke		1718
Rev. Jacob M. Douglass		1728
Robert M. Lewis, Jr.	436 Walnut	1732
Harry G. Clay	236 S. 5th	1734
Earnest Zantzinger	147 S. Front	1736
David Samuel	332 Walnut	1811

Pine Street.

T. Morris Perot	314 Vine	1810
Emilie P. Etting		1817
Henry Fling		1818
Joseph Lea	128 Chestnut	1821
Anna M. Lea		1821
Thomas Mason's Estate	311½ Walnut	1822
Charles S. Potter	108 S. Front	1823
Wm. Parker Foulke's Estate		1827
Thomas J. Diehl	530 Walnut	2001
Morton P. Henry	416 Walnut	2017
Mary M. Henry		2017
Jane N. Biddle's Estate	113 S. 5th	2033
Wm. Brown's Estate, used by Elizabeth N. Brown		2035
Charles McCrea	707 Walnut	2111
George Emlen, Jr.'s Estate	819 Walnut	2117
N. Chapman's Estate		2117
James West	312 Berks	2121

Clinton Street.

Erskine Hazard's Estate		901
Hannah C. Ralston		914
Albert Vezin	Frankford	915
Edward Hopper,	323 Walnut	919
Thomas D. Nancrede	209 S. 6th.	920
Thomas Sergeant		922
E. S. Sayers	500 Locust	925
Louisa V. Newlin		1018
John S. Phillips		1022

De Lancey Place.

Louisa Mordecai		1810
Julia M. Wharton		1815
John T. Montgomery	204 S. 5th	1815
A. G. Montgomery		1815
Robert Patterson	329 Chestnut	1825
Thomas Dunlap's Estate		1827

De Lancey Place.

George Blight		1832
C. Stuart Patterson	623 Walnut	2003
James A. McCrea, M.D.		2004
Henry Helmuth's Estate, used by A. Percival		2005
Ann C. Coleman		2010
Henry Wharton	204 W. Wash. Sq.	2011
Peter McCall	224 S. 4th	2012
Sarah Lewis		2016
Frederick Fraley	417 Walnut	2017
Abigail Morris' Estate	417 Walnut	2017
Charles D. Cleveland's Estate		2023
William A. Stokes	113 S. 5th	2026
Robert Harford Hare		2031
Frederick Brown's Estate	Fifth and Chestnut	2036
Hugh T. Hollingshead's Estate		2119
Mrs. C. W. Hollingsworth		2119
Samuel G. Merrick	407 Walnut	2123

Spruce Street.

Harry Thompson	132 N. 3d	411
Maria Stewart		532
Henry L. Stewart		532
Wm. Walter Ross	528 S. 3d	612
Wm. Wilson's Estate		704
Samuel Welsh	218 S. Del. Avenue	708
Alexander Fullerton's Estate		710
H. Messchert		715
James Kitchen, M.D.		715
James J. Barclay	219 S. 6th	719
H. W. Burroughs	138 S. 3d	726
John William Wallace		728
Pennsylvania Hospital	cor. of 8th	
John Conrad, M.D.	Pennsylvania Hospital	
Mary Marshall's Estate		809
Joseph C. Turnpenny		813

Spruce Street.

Sarah C. Dewey		ab. 9th
D. Lapsley's Estate		900
Eliza F. Warder		cor. 9th
Francis Hopkinson's Estate		cor. 9th
Mary E. Longstreth		904
John Jordan, Jr.	27 N. 3d	906
Mrs. Antoinette Bell, used by John Jordan, Jr.	27 N. Third	906
John P. Brock	258 S. 3d	908
Susan W. Price		911
Charles Willing, M.D.		916
J. Fisher Leaming		922
John C. Carpentier's Estate		926
James Gibson's Estate	532 Walnut	near 10th
J. Rodman Paul	228½ Walnut	1006
Edward Shippen, M.D., U. S. N., used by J. Rodman Paul,	228½ Walnut	1006
E. L. M. Berghmans		1016
Emlen Cresson		1029
Edward Roberts	320 Walnut	1035
Isabella L. Tatham		1102
Joseph Carson, M.D.		1120
William Welsh,	218 S. Delaware Av.	1122
Stephen O. Fuguet	229 S. Front	1128
Mrs. S. W. Wilcocks		1129
Ellerslie Wallace		1130
Harrison Allen, M.D		1135
Joshua Yorke		1202
William W. Gerhard		1206
Robert Toland		1213
James Hepburn's Estate		1212
Matilda Dale		1215
Charles Newbold's Estate		1217
Wm. E. Morris	715 Walnut	1225
George W. Biddle	208 S. 5th	1226
John B. Gest	129 S. 5th	1231

SPRUCE STREET.

Richard Price's Estate		1300
John T. Lewis	231 S. Front	1301
Clement A. Buckley		1305
Frank M. Etting	711 Walnut	1315
Moncure Robinson		1319
George M. Dallas' Estate		ab. 13th
William G. Thomas		ab. Juniper
Jane A. Colhoun		1329
William Colhoun		1329
Elizabeth D. Baird		1408
Robert Morris, M.D.		1413
Mary Penrose		1414
Calebina Newbold		1416
Stephen Morris' Estate		1418
Lawrence Lewis' Estate	436 Walnut	1419
Mordecai L. Dawson	139 S. 7th	1420
Joseph Price	315 Market	1421
Edward C. Biddle	230 S. 3d	1422
Sarah F. Keys' Estate	230 S. 3d	1422
Mary M. Brinton		1423
John H. Brinton, M.D.		1423
John C. Otto's Estate		1427
William Weirs' Estate		1433
Joseph Mora Moss		1434
J. Cheston Morris, M.D.		1435
Sally M. Waln		1437
Edward Waln	721 Walnut	1437
Charles S. Coxe		1512
Thomas H. Powers	9th and Parrish	1525
Thomas H. Powers, Trustee		1525
Samuel L. Hollingsworth, M.D.		1533
Margaretta Robertson		1531
John Lisle's Estate		1618
A. Douglass Hall		1623
S. Littell, Jr.		1624

Spruce Street.

Samuel Robb	230 S. 4th	1630
George Read		1634
Isaac J. Wistar		
Penna. R. R. Office, 3d & Willing's Alley		cor. 17th
Mary Hamilton Kuhn		1710
Hartman Kuhn		1710
John B. Newman	122 S. 7th	1716
Selina Lippincott's Estate		1717
Thomas A. Biddle	326 Walnut	1720
John M. Atwood		1726
John Perot's Estate, used by Mrs. Mary P. Lardner		1727
William Elmslie's Estate		1729
James N. Whelen	311 Walnut	1805
Mitchell G. Rosengarten	1700 Fitzwater	1815
Samuel Wagner	627 Walnut	1819
Travis Cochran	324 Walnut	1820
Sarah L. Mifflin		1824
Ann P. Mifflin		1824
Sarah F. Cuyler		1825
Edward S. Handy	25 N. 5th	1826
David Pepper		1827
Elihu Chauncey	109 Walnut	1828
Chapman Freeman	135 S. 5th	1832
Morton McMichael	132 S. 3d	1841
Ellen Sergeant		1911
Benjamin Gerhard's Estate	227 S. 4th	1911
Arthur McClellan		1915
Frederic Collins	109 S. 3d	1918
Charles Norris	Dock bel. 2d	1925
S. Decatur Smith	35½ S. Front	1927
Harriet Baker		1931
Wm. W. Frazier, Jr.	101 S. Front	2012
William L. Mactier	132 Walnut	2122
Hugh Roberts' Estate, care of G. W. Watson		[2016
William Struthers	1022 Market	ab. 21st

Spruce Street.

Ellen M. Reynolds, used by E. C. Prosser		
	12th and Chestnut	2217
William Brooke Rawle	710 Walnut	2308
Rev. Charles P. Krauth		4357

Rittenhouse Square.

Fairman Rogers		202 W.
Lewis A. Scott		1806
Clement S. Phillips		1810
Theodore Cuyler	704 Walnut	1826
Solomon W. Roberts	407 Walnut	1830
Charles Gibbons	132 S. 3d	1920

Locust Street.

James H. Castle	115 S. 5th	709
Robert Patterson		1300
Louisa Gratz		1309
Elizabeth H. Pile		1401
Emily Judson		1405
Oliver A. Judson, M.D.		1405
George L. Taylor, M.D.		1423
Mrs. Lucy H. Hooper		1502
John M. Thomas	512 Walnut	1504
Richard C. McMurtrie	416 Walnut	1522
Isaac Hays, M.D. [country residence]	Chestnut Hill	1525
George W. Norris, M.D		1534
George C. Morris 520 Walnut	Chestnut Hill	1600
Joseph H. Dulles		1602
William Thomson, M.D.		1607
Archibald McCall's Estate [country residence]	Chestnut Hill	1610
James Bayard [country residence]	Merion Avenue	1612
Isaac Lea		1622
Mrs. Mary P. Fisher		1701
John J. Ridgway, Jr.	204 S. 7th	1702

Locust Street.

Charles Hare Hutchinson	708 Walnut	1703
Margaretta Hutchinson		1703
S. Emlen Meigs	114 Chestnut	1713
James S. Biddle		1714
George W. Harris	210 Chestnut	1715
Nicholas Lennig	112 S. Front	corner 18th
Persifer Frazer, University of Penna.	9th St.	West Phila.

Walnut Street.

R. H. Lamborn	125 S. 5th	522
P. S. P. Conner		526
David Lewis		526
Susanna Poulson's Estate, care of Z. P. Dobson		615
William S. Price		633
Horace Evans, M.D.		635
Benjamin Harris Brewster		706
Benjamin Rush		708
Benjamin Rush's Estate		708
William Henry Rawle		710
Alexander Biddle [country residence] Chestnut Hill		712
Mrs. Julia W. Biddle [country residence] Chestnut Hill		712
Clement Biddle		714
Hugh L. Hodge		903
Emile B. Gardette, M.D. [country residence] Germantown		910
Jacob S. Waln's Estate		914
Phoebe L. Waln [country residence] Germantown		914
J. Francis Fisher [country residence] Germantown		919
Joseph W. Roges [country residence] Germantown		922
William P. Tatham	226 S. 5th	1002
Sarah C. Biddle		1002
Margaretta S. Lewis		1006
Isaac R. Smith		1016

WALNUT STREET.

Walter B. Smith		1016
Charles Ingersoll		1026
William Stevenson	603 Walnut	1108
Thomas McEuen		1110
Anne McEuen's Estate		1110
Robert Ralston's Estate		ab. 11th
Alfred M. Fleming		ab. 11th
Charles Yarnall		1111
Henry H. Smith, M.D.		1112
Hannah M. Wharton		1118
Kate M. Maison		1123
Robert Adams, Jr.		1130
Arthur Burt, Jr.		1203
Arthur A. Burt's Estate		1203
Edward Shippen, M.D.		1205
Edward Shippen	532 Walnut	1207
John F. Meigs, M.D.		1208
Samuel J. Reeves		1209
George M. Justice's Estate		1211
Mrs. J. Williams Biddle		1210
Edward E. Law	621 Walnut	1212
Charles Smith		1213
Wm. Pepper's Estate		1215
Rebecca James		1216
Saunders Lewis		1216
Charles Wheeler's Estate		1217
Francis F. Maury, M.D.		1218
Mrs. R. M. McMurtrie's Estate		1228
Elizabeth W. Stevenson		bel. 13th
Francis R. Wharton		bel. 13th
Peter Cullen		cor. 13th
John W. Lowber's Estate		1305
Israel Pemberton		ab. 13th
Charles S. Lewis		1312
Charles Ferguson		1314

Walnut Street.

George T. Lewis	231 S. Front	1323
Henry M. Phillips	126 S. 6th	1325
Sarah M. Mitchell		1332
Alexander Campbell	210 S. 4th	1336
St. George T. Campbell	210 S. 4th	1336
Lamar W. Fisher	36 S. 7th	1338
Sarah Mifflin's Estate	W. side ab. Juniper	
Charles Harlan's Estate	ab. Juniper	
James Dundas' Estate	cor. of Broad	
Linda F. Brolaskey		1414
A. J. Antelo	424 Walnut	1407
Mary Roberts Smith		1408
Julian C. Hare	[country residence] Maryland	1410
Isaac S. Waterman's Estate	407 Library	1416
Alfred L. Elwyn, M.D.		1422
Isaac Norris	617 Walnut	1424
Isaac Norris, Jr., M.D.		1424
Henry P. Norris		1424
Alfred D. Jessup	27 N. 6th	1426
Sarah F. Pleasants		1433
Edward Hartshorne, M.D.		1439
George F. Tyler	328 Walnut	cor. 15th
Charles J. Stillé, University of Penna.,	9th ab. Chestnut	1505
John Bohlen	603 Walnut	Chestnut Hill 1510
Mrs. Maria E. Blanchard		1511
Maria E. Swann		1512
Theodore H. Morris	1608 Market	1515
John F. Frazer		1517
Edward S. Whelen	309 Walnut	1520
Alexander Wilcocks, M.D., care Kirk B. Wells		1519
Joseph Swift		1523
Robert Bliss		1528
Alice Burt		1529
S. H. Horstman's Estate		1600

Walnut Street.

Sarah R. Paul		ab. 16th
George D. Wetherill	56 N. Front	ab. 16th
John W. Williams		1616
Edward S. Willing		1618
Henry J. Biddle's Estate	326 Walnut	1623
Samuel Bradford, trustee	227 S. 4th	1628
Thomas Ridgway	408 Chestnut	1705
Abigail Cooper's Estate		1707
J. Sergeant Price	709 Walnut	1709
Mrs. A. G. Hubbell		1711
Byerly Hart	221 Chestnut	1717
William B. Hart's Estate		1717
Bloomfield H. Moore	27 N. 6th	1718
William R. Lejée	309 Walnut	1801
Henry Sylvester	208 S. 4th	1805
Frederick J. Sylvester	208 S. 4th	1805
Thomas Sparks	121 Walnut	1813
Robert S. Sturgis		1815
William G. Cochran		1817
Jesse E. Smith	132 Walnut	1819
James L. Claghorn	314 Chestnut	1825
Samuel Norris' Estate	617 Walnut	1903
William F. Emlen		1903
Henry C. Lea	706 Sansom	2000
Henry Pratt McKean, Dock bel 2d [country residence] Germantown		cor. 20th
Clement B. Newbold		cor. 20th
John S. Newbold		cor. 20th
James H. Hutchinson, M.D.		ab. 20th
Sarah C. Savage		2032
A. J. Cassatt		2035
Robert Y. Cassatt		2035
John Rice		2100
James C. Smith		2104
Henry Preant	500 S. Del. av.	2008

Walnut Street.

George Cadwalader		2116
Hannah M. Peterson's Estate, care of George W. Childs, 6th and Chestnut		cor. 22d
St. James' Church, care of G. W. Hunter, 215 S. 3d		2201
B. P. Hutchinson	1 Merchants' Exchange	3813
Henry M. Dechert	309 S. 5th	3912
Robert C. Matlack	1224 Chestnut	3914
Susan B. Harper		3924
A. M. Prevost's Estate	205 S. 5th	4201
Rev. Albert Barnes' Estate		4209
B. B. Comegys	421 Chestnut	4205

Library Street.

James L. Fisher's Estate		407

Sansom Street.

J. Gordon Brincklé	117 S. 7th	707
Louis B. Wells		1722

Chestnut Street.

Board of Trade		505
Ira E. Walraven		719
Augustus Heaton		Continental
Mary Coles		Continental
Emma R. Catherwood		Continental
Josiah Randall's Estate, used by Robert E. Randall	615 Walnut	Continental
Charles A. Duy	300 Walnut	Markoe House
Sarah L. Keene's Estate	704 Walnut	cor. 10th
Cecilia Darley		1118
John M. Read		1119
American Sunday School Union		1122
Alexander W. Johnstone's Estate		1402
William L. Wistar		1426
Richard Wistar		1426

CHESTNUT STREET.

M. L. G. Cottringer		1427
William G. Caldcleugh		1430
Caspar Morris, M.D.		1428
Mrs. A. D. D'Arozarena		1514
Louis A. Godey	537 Chestnut	1517
Louis Godey	537 Chestnut	1517
George Fox, M.D.		1519
Samuel G. Rosengarten	1700 Fitzwater	1532
Edward Peace, M.D. [country residence] Montgomery County.		1602
R. Warington Rulon		ab. 16th
Mary Wagner		1604
Sarah W. Twells' Estate		1606
John Large		1610
Robert H. Large		1610
John Strawbridge	700 Arch	1616
Charles B. Durborow	232 Market	1617
Charles C. Cresson		1618
Joseph G. Richardson, M.D.		1620
Charles S. Boker, M.D.		1622
Henry Cramond	621 Walnut	1631
William D. Stroud	133 S. 4th	1718
Rev. Peter Van Pelt		1719
Anna L. Griffith		1802
Mrs. Louisa Neff		1901
Percival Roberts	414 Walnut	1935
Gainor Roberts		1935
Miss Laura G. Brooks		2006
William W. Longstreth	303 Walnut	2017
John W. Simes, Jr.	2138 Market	2033
William H. Fuguet	229 S. Front	2047
Samuel H. Dickson, M.D.		3240
Richard Morris Smith		3715
John W. Horner	921 Chestnut	3716
Whitton Evans, care of Chas. W. Horner	15 S. 7th	4039
Mrs. Ellen L. Geyelin		ab. 42d

Minor Street.

Jacob Ridgway's Estate, care of Thomas Craven		504

Girard Street.

Edward Tilghman		1114
William M. Tilghman	417 Walnut	1114
Mrs. M. E. Osbourn		1121
William V. McKean	600 Chestnut	1135

Market Street.

Mary Ann Marshall, care of Chas. Ellis, Son & Co.		1000
William P. Walker		1233

Arch Street.

Thomas G. Megear		141
Union M. E. Church, care J. T. Mason		419
Joseph D. Browne's Estate		433
Isaac Jeanes	8 Chestnut	521
Mary Jeanes		521
Michael Baker's Estate		708
Mifflin Wistar		703
John Farnum	233 Chestnut	713
Robert V. Massey	428 N. 3d	1022
Francis Jordan	209 N. 3d	1013
William S. Crother's Estate		1015
Matilda C. Volans		1110
James J. Levick		1112
George B. Wood, M.D.		1117
Richard D. Wood's Estate	309 Market	1121
John Livezey		1123
Joseph P. Smith		1131
Eleanor P. Long		1134
Israel Morris	1608 Market	1202
Adam Everly's Estate		1204
Joseph Jones		1215
Joseph A. Jones		1215

Arch Street.

George W. Farnum's Estate, care of Rev. G. H. Batterson		1229
Rachel Wetherill		cor. 13th
Rachel Wetherill, trustee		cor. 13th
Dr. Caspar Wister		1303
Serena M. Potts		1309
George R. Smith		1311
Joseph A. Donelly		1314
John B. Trevor's Estate		1314
Ann Maria Williams' Estate		1319
Caspar Wistar's Estate		1321
Frederic Graff		1337
John R. Baker	218 S. 4th	1414
John M. Kennedy	4th and Chestnut	1423
Lydia Leedom		ab. 15th
Thomas S. Newlin	120 Arch	1510
Edward L. Scull	125 Market	1516
David Scull		1516
Susan S. Brown		1609
Benjamin Coates	127 Market	1616
Rebecca Hornor		1613
William S. Vaux	46 N. 17th	1700
George Vaux	46 N. 17th	1715
Elizabeth T. Lehman		1718
Stephen Fuguet	229 S. Front	1828
James Fassitt's Estate		1833
Ann M. Sulger's Estate, care of Lucy Sulger		1908
Evan Randolph		2002
William E. Spofford's Estate		2005

Filbert Street.

William Kirkham		1215
Hannah W. Smith		1315
Enoch Wheeler's Estate		ab. 13th
James T. Mitchell	430 Walnut	1407

Filbert Street.

Sitgraves E. Massey		1417
William Massey	10th and Filbert	1417
Anna E. Massey		1537
Anna Pancoast		1617
Rachel B. Richards		1621
Samuel R. Shipley	111 S. 4th	1623
Richard Cadbury Wister	221 Chestnut	1727
George W. Hunter	217 S. 3d	1823

Cherry Street.

Dillwyn Parrish		1017
Samuel F. Troth		1019
Joseph K. Potts' Estate		1023
Thomas S. Stanbridge		1638

Logan Square.

E. V. Machette	427 Chestnut	242

Race Street.

Horatio C. Wood, trustee		612
Horatio C. Wood		612
Henry J. Child		634
Francis Heyl		1004
Joseph Cresson, Jr.		1013
John G. Wilson	2301 Cherry	1207
Charles S. Sower	530 Market	1711
James McAlpin's Estate		1714

Summer Street.

Charles S. Keyser	524 Walnut	1612

Vine Street.

William M. Kennedy		207
Jacob Jeanes, M.D.		521
Thomas H. Yardley's Estate		525
Julius F. Sachse	8th and Vine	1526

VINE STREET.

John J. Hartman		1603
Charles Yard	807 Race	1706
James S. Whitney	16th and Callowhill	1815
Thomas B. Wattson	135 N. Water	1817

RIDGE AVENUE.

John C. Cresson		cor. 33d

MARSHALL STREET.

Gillies Dallett		
	122 and 1319 Market and 951 Ridge av.	442
Samuel A. Bispham	629 Market	443
John M. Ogden	34 N. 5th	446
Helen R. Bacon		463
James M. Robb	14 S. 7th	621

WOOD STREET.

Franklin S. Taylor	700 Chestnut	1225

CALLOWHILL STREET.

H. R. Warriner	26 N. 7th	1116
Charlemagne Tower	Pottsville, Pa.	cor. Broad

SPRING GARDEN STREET.

Joseph H. Seaver	35 S. 3d	2135

GREEN STREET.

Almira H. Smith		ab. 10th
Edward W. Wilson		1500
Euselma C. Smith		1515
B. F. Quimby		2019
Gertrude A. Quimby		2019
Fifth Baptist Church, care of John E. Potter		
	617 Sansom	2127
William H. Kemble	208 S. 4th	2205

BARING STREET, WEST PHILADELPHIA.

Thomas Matlack		3317

MOUNT VERNON STREET.

James Reisky	139 N. 3d, and 136 N. 8th	1111
Rev. Matthew Simpson		1807
James Alexander's Estate		1813
George Whitely	107 Walnut	1815

COATES STREET.

Hugh A. Pue's Estate		1906
Eliza H. Dick		1927

WALLACE STREET.

Henry Knauff	649 N. Broad	1613

WYLIE STREET.

Rev. T. W. I. Wylie		1822

BROWN STREET.

Rev. Thomas J. Shepherd		507
John Y. Taylor, care of J. L. Taylor	916 Market	717

SHACKAMAXON STREET.

John Robbins		908

GIRARD AVENUE.

Robert Case Clark		
Mary A. Lynch		Girard College

RICHMOND STREET.

John Wainwright, corner Beach and Hanover

BELMONT AVENUE, WEST PHILADELPHIA.

C. Campbell Cooper, M.D.	517 Locust	N. of Monument

Second Street.

Thomas E. Pryor		901 N.

Third Street.

J. Morris Harding	135 S. 5th	292 S.
Samuel W. Thackara	138 S. 3d	244 S.
C. E. D'Invillier's Estate		129 S.

Fourth Street.

Jacob Randolph's Estate		cor. Union S.
W. W. Harding	304 Chestnut	283 S.
George Wm. Dallas	222 S. 4th	281 S.
Eliza P. Davids		275 S.
Sophia Borie		265 S.
Hugh Davids' Estate		261 S.
William H. Ruddiman	504 Walnut	259 S.
John Cadwalader		252 S.
Horace Binney		241 S.
Morris S. Wickersham		225 S.
Eliza Ann Taylor		220 S.
William M. Meredith		216 S.
Stevenson M. Leaming, care of J. Somers Smith		212 S.
Albert S. Letchworth	430 Walnut	534 N.

Fifth Street.

Samuel F. Flood		810 S.
Caroline A. Burgin		331 S.
Anson V. Parsons		260 S.
George Roberts' Estate, care of James B. England		208 S.
William E. Whitman		133 S.
George W. Thorn		250 N.
George W. Wollaston	432 Library	938 N.

Sixth Street.

Robert Briggs	5th and Washington	1535 S.
J. I. Clark Hare		229 S.

Sixth Street.

Mrs. Elizabeth F. Binney		227 S.
William J. Binney		227 S.
John Ashhurst	16 S. 3d	225 S.
Lewis C. Cassidy		221 S.
James Campbell		215 S.
Samuel Bispham	629 Market	263 N.
William Bettle		426 N.
William B. Mann	144 S. 6th	533 N.
Clara Evans		955 N.

Franklin Street.

Saint Jude's Church, care of J. L. Smith Green ab. 10th		ab. Brown N.
John Rugan's Estate		716

Seventh Street.

Benjamin H. Coates, M.D.		242 S.
Thomas Hutchinson		238 S.
Betty E. Forsyth		25 S.
John D. Bleight		27 N.
James Shields	119 N. 3d	429 N.
Thomas Williams' Estate		ab. Race
Henry Korn		461 N.
Henry Budd	110 S. 4th	503 N.
William Neal		536 N.
Letitia Foulke		541 N.
Philidor S. Bell	609 Walnut	876 N.

Washington Square.

Helen Kate Furness	222
George L. Crawford	210
Charles H. T. Collis	208

Eighth Street.

Esther H. Sharpless	637 Market	401 S.
John S. Martin	3 Exchange Place	248 S.
Mrs. C. S. Langstroth		232 S.
Joseph Perot		229 S.
Samuel Jackson, M.D.		224 S.
William Harris	222 Walnut	222 S.
Henry W. Rihl, M.D.		946 N.

Ninth Street.

Church of the Messiah, care of Rev. George Bringhurst		758 S.
Ann Jane Cuthbert		627 S.
William Procter	900 Lombard	500 S.
Ann L. Wells		216 S.
James G. Barnwell		327 N.

Tenth Street.

Dennis F. Dealy	23 S. 7th	742 S.
Anna E. Dealy		742 S.
Alfred R. Ashton		730 S.
Harris L. Sproat		323 S.
James A. Bancker		312 S.
Edward S. Buckley	228½ Walnut	308 S.
John G. Hunt, M.D.		123 N.
Edward Bettle's Estate		149 N.
Samuel Bettle's Estate		151 N.
Joseph R. Chandler		155 N.
Elijah Dallet	6th and Vine	415 N.
Mrs. J. E. Ringwalt	7th and Chestnut	1218 N.
Rev. Henry S. Spackman, used by E. B. Shapleigh, M.D.,	651 N. 8th	1530 N.
William McConnell	969 Beach	1615 N.

Eleventh Street.

Joseph Thomas, M.D.		116 N.
Anna H. James		116 N.
Margaret Burleigh		116 N.
William S. Wilkinson		121 N.
George W. Hall		250 N.
Albert G. Emerick		611 N.
Joseph S. Crawley	307 Arch	1829 N.

Twelfth Street.

Morris Longstreth, M.D.		
	Penna. Hospital, 8th and Spruce	331 S.
Charles S. Wurtz, M.D.		321 S.
Mary Biddle		312 S.
Edward Yarnall's estate		120 S.
Ellen Christian's estate		116 S.
Samuel J. Christian	148 N. Del. Av.	116 S.
Constantine Hering, M.D.		112 N.
William M. McFadden	716 Walnut	333 N.
John W. Huff	705 Jayne	1832 N.
Edward T. Randolph		1904 N.

Camac Street.

Bennet W. Marcy	Cor. 11th and Ridge Av.	1803

Thirteenth Street.

Charles Gilpin	615 Walnut	336 S.
George Sharswood		332 S.
St. Luke's Church		320 S.
William S. Phillips	219 S. 6th	306 S.
Levi Dickson		251 S.
Thomas Hewson Bache, M.D.		233 S.
J. Alfred Kay	19 S. 6th	129 S.
Simon Gratz's estate		118 S.
Horace Moses		118 S.
William Hooper, M.D.		112 S.

Thirteenth Street.

Benjamin W. Richard's Estate	524 Walnut	104 S.
Paul A. Davis, Jr.	129 Arch	1407 N.
William H. Simpson	631 Walnut	1606 N.

Park Avenue.

Rev. Charles Duane		1701
William Duane	619 Walnut	1701

Broad Street.

John B. Parker		cor. of Federal S.
Mrs. J. Rhea Barton		cor. of South S.
J. N. Power Wallace	128 S. 6th	422 S.
Charles A. Perkins	627 Walnut	416 S.
John Bell, M.D.		408 S.
Mary R. Fox		339 S.
Rev. George Emlen Hare		329 S.
George Gilpin	227 Dock	312 S.
Charles Dutilh	304 Walnut	311 S.
Ann Rawle		220 S.
Isaiah Hacker	233 Chestnut	221 S.
William F. Jones		13 S.
Eli K. Price	709 Walnut	9 S.
Thomas A. Reilly, M.D.		718 N.
James S. Mason	140 N. Front	1637 N.
William Little	9 Hudson	3402 N.
J. Dickinson Logan, M.D.		cor. of Indiana

Merrick Street.

John L. Ludlow, M.D.		10 N.
John McAllister		14 N.
Hezekiah Buzby's Estate	933 Market	24 N.
Lydia I. Hunn	709 Walnut	26 N.

Fifteenth Street.

Strickland Kneass	224 S. 5th	418 S.
John Lambert	152 S. 4th	342 S.
J. Dickinson Sergeant	420 Walnut	342 S.
T. Bradford Dwight	202 S. 5th	319 S.
William Bradford		319 S.
Edward King		315 S.
Caroline J. Wetherill		314 S.
Joseph A. Clay	5th and Locust	313 S.
James Lestie, Jr.'s, Estate		310 S.
Charles E. Smith		216 S.
Henry Windsor	338 S. Del. Av.	137 S.
J. Dorsey Bald		131 S.
Elizabeth H. Blake		149 N.

Sixteenth Street.

Elizabeth Ingersoll Lowber		319 S.
Mrs. Fanny H. Dulles		262 S.
A. Bates Grubb		253 S.
Samuel R. Shober's Estate	26 S. Del. Av.	249 S.
Pemberton S. Hutchinson	112 Chestnut	247 S.
Mrs. Mary Ann Sharp		115 S.
Church of the Covenant, care of Rev. C. E. Murray		27 S.
Isaac H. Hobbes	811 Chestnut St.	29 N.
Pemberton Smith.		30 N.

Seventeenth Street.

Joseph H. Trotter	322 Walnut	255 S.
George Allen	University of Pa., 9th ab. Chestnut	215 S.
Mahlon Gillingham	134 S. 3d.	749 N.

Eighteenth Street.

S. Kingston McCay	429 Walnut	327 S.
G. Albert Lewis	32 N. 6th	325 S.
John Neill, M.D.		258 S.
Julia L. Clark		247 S.

Eighteenth Street.

Ephraim Clark	717 Walnut	247 S.
George A. Wood	426 Walnut	237 S.
Nicholas Lennig	112 S. Front	231 S.
Joseph Harrison, Jr.	Gray's Ferry Road	221 S.
Julia Duhring		bel. Walnut
Nathaniel P. Gordon		120 N.
William Cadwalader		125 N.
Benjamin F. Huddy		253 N.
Henry Baldwin, Jr.		251 N.

Nineteenth Street.

Grace Kiernan		336 S.
Cadwalader Wickersham	247 S. 3d	265 S.
S. Grant Smith	126 S. Del. Av.	27 S.
Henry S. Hagert	532 Walnut	305 N.
George Manly, used by Henry S. Hagert,	532 Walnut	305 N.
Edward Ely	611 Commerce	522 N.

Twentieth Street.

Lewis Waln Smith	707 Walnut	120 S.
J. G. R. McElroy	University of Penna., 9th ab. Chestnut	bel. Chestnut
John S. Morris' Estate		215 N.
James C. Milligan	326 Walnut	215 N.

Twenty-First Street.

Thomas M. Cleemann	308 Walnut	340 S.
George J. Riché	Broad and Green	332 S.
Lewis Krumbhaar		115 S.

Thirty-Second Street.

Timothy Abbott's Estate—Rebecca Abbott	329 N.

Thirty-Third Street.

Ann Sellers' Estate—John Sellers	1600 Hamilton	cor. Arch

FORTIETH STREET.

Anne H. N. Brewster, care Miss Westcott	428 S.
Charles Gurney Poulson	411 S.
Ellis Lewis' Estate	302 S.
William Harris Kneass	cor. Oregon

FORTY-SECOND STREET.

Robert Ewing's Estate	237 S.

FORTY-SIXTH STREET.

Thomas S. Kirkbride, M.D.	cor. Haverford

FIFTY-NINTH STREET.

Hugh McIlvaine	3401 Market	cor. Elmwood

DARBY ROAD.

Robert S. Paschall	715 Walnut
Munro Mackie, M.D.	

YORK AVENUE

William Piersol's Estate, care of J. W. Piersol	
Girard Bank	549 N.

FRANKFORD AVENUE.

Benjamin P. Hunt	1724

GRAY'S FERRY ROAD.

Samuel Thomas, M.D.	Balt. Depo
Eliza H. Thomas	Balt. Depot

GERMANTOWN.

Joseph M. Aertsen	Dock and Walnut	Germantown
Edward Armstrong	407 Walnut	Germantown
Samuel H. Austin	129 S. 7th	Chestnut Hill
Edward Bedlock	715 Walnut	Germantown
George S. Bethell	520 Walnut	Germantown
Vincent L. Bradford	707 Walnut	Germantown

Germantown.

Moses Brown [2 shares]		Germantown
Robert Cabeen	409 Walnut	Germantown
Ellen D. Carpenter		Germantown
Samuel Chew		Germantown
Cephas G. Childs		Chestnut Hill
Christ Church, care of C. Spencer	7 Bank	Germantown
Eliza Churchman	33 S. Front	Germantown
Alfred Cope		Germantown
Edwin R. Cope	523 Minor	Germantown
Francis R. Cope	1 Walnut	Germantown
Herman R. Cope's Estate		Germantown
Allen W. Corson		Norristown
Joseph B. Cowperthwait	628 Chestnut	Chestnut Hill
B. Dalton Dow	627 Walnut	Germantown
Robert D. Dunning	U. S. Mint	Germantown
Henry Earle	28 S. 3d	Germantown
Richard C. Ely		Germantown
J. Wistar Evans, trustee	410 Race	Germantown
James A. Farnum	235 Chestnut	Germantown
Elizabeth R. Fisher	407 Walnut	Fisher's Lane
Gilbert R. Fox	434 Library	Norristown
Reuben Haines		Germantown
Charles Henry Hart	502 Walnut	Germantown
Jonathan K. Hassinger	504 Commerce	Rising Sun
Alexander Henry	611 Walnut	Germantown
Frederick Heyer's Estate	241 S. 3d	Germantown
Samuel Hood	247 S. 6th	Germantown
Edward Ingersoll	208 S. 5th	Germantown
James Johnson's Estate	241 S. 3d	Germantown
Mary K. Johnson		Germantown
Thomas F. Jones		Germantown
Horatio G. Jones	45 N. Water	Roxborough
E. Otis Kendall		Germantown
Sarah P. Knight		Germantown
James R. Lambdin	1224 Chestnut	Germantown

Germantown.

Richard Levick	708 Chestnut	Chestnut Hill
Charles Willing Littell	520 Walnut	Germantown
Gustavus G. Logan		Germantown
J. Longstreth's Estate		Germantown
William H. Merrick	627 Walnut	Germantown
Archibald McElroy	637 Chestnut	Chestnut Hill
Mrs. M. A. Mitchell, care of J. E. Mitchell	310 York Avenue	Chestnut Hill
Anna M. Montgomery		Germantown
Galloway C. Morris	208 Walnut	Germantown
Mary Ann Cope Morris		Germantown
Elliston P. Morris	21 N. 7th	Germantown
Samuel G. Morton's Estate	715 Market	Germantown
George M. Newhall	225 Church	Germantown
Charles Noble, Jr.	410 Brown	Germantown
Mary E. Noble [now Leavitt]		Germantown
Richard Norris	Spring Garden ab. 17th	Germantown
Susan L. Norris		Germantown
Charles S. Pancoast	416 Walnut	Washington Lane
John Pastorius, care of F. D. Pastorius	418 Walnut	Germantown
Isaac Pugh	425 Chestnut	Germantown
Right Rev. Alonzo Potter	232 Market	Germantown
Mrs. Elizabeth C. Ralston		Chestnut Hill
Edward Roberts [No. 2]		Germantown
Charles W. Robinson	812 Walnut	Germantown
J. Duval Rodney	506 Walnut	Germantown
Charles H. Rogers	306 Walnut	Germantown
Anna B. Serrill	520 Walnut	Germantown
William J. Shields	129 Church	Germantown
Thomas Shipley	20 N. 7th	Germantown
Alfred Smith	10 S. 3d	Germantown
Alexander Hamilton Smith		Germantown
Daniel B. Smith		Germantown
Elizabeth P. Smith		Germantown

Germantown.

John Jay Smith		Germantown
Lloyd P. Smith	5th and Library	Germantown
Theodore Starr	233 Chestnut	Chestnut Hill
Cornelius Stevenson	603 Walnut	Germantown
Elizabeth C. Stevenson		Chestnut Hill
Thomas Stewardson, Jr.	1132 Girard	Germantown
Thomas McIntosh Stewart		Germantown
Ann Stewardson		Germantown
Anthony E. Stocker, M.D.		Germantown
George M. Stroud		Germantown
Elizabeth Swift		Germantown
Emilie Trotter, care of Edward H. Trotter	36 N. Front	Chestnut Hill
John J. Thompson		Chestnut Hill
George W. Toland's Estate		Germantown
Redwood F. Warner		Germantown
John Welsh, Jr.	226 S. Del. Av.	Chestnut Hill
James Whitall	410 Race	Germantown
Jacob T. Williams		Germantown
Henry J. Williams	712 Walnut	Chestnut Hill
Julia R. Williams' Estate	712 Walnut	Chestnut Hill
Charles J. Wister		Germantown
Elizabeth E. R. Wister		Germantown
John Wister's Estate	407 Walnut	Germantown
Sarah B. Wister		Germantown
William Wister	407 Walnut	Germantown
William M. Wister		Germantown
G. Dering Wolff		Norristown
B. H. Yarnall, Jr., care of Ellis Yarnall	147 S. Front	Germantown
Ellis Yarnall	147 S. Front	Germantown

"Walnut Street Wharf."

[This includes residents of New Jersey.]

J. Simpson Africa	Burlington Co., New Jersey
J. O. C. Barclay	Burlington Co., New Jersey

Walnut Street Wharf.

William Bettle, Jr.		Camden, New Jersey
Henry Bower Gray's Ferry Road near 29th		New Jersey
Thomas C. Carpenter		Camden, New Jersey
John Clement		New Jersey
L. Susan Collet		Burlington, New Jersey
William D. Cooper		Camden, New Jersey
J. Ogden Cuthbert		New Jersey
William M. Davis	225 Church	Morristown, New Jersey
Elizabeth K. Fobes		Bordentown, New Jersey
Charles H. Landis		Vineland, New Jersey
Benjamin V. Marsh	309 Chestnut	Burlington, New Jersey
Rev. W. Herbert Norris	313 S. 18th	Woodbury, New Jersey
William Pearsall		Mooretown, New Jersey
Augustus H. Richards		Pleasant Mills, New Jersey
William Fen Smith		Camden, New Jersey
Philip F. Snyder	113 S. 5th	Beverly, New Jersey
Garret Van Gelden's Estate		Camden, New Jersey
Sarah A. Ward		Mount Holly, New Jersey
Alfred Woodward, M.D.		Imlaystown, New Jersey

"Kensington Depot."

[This includes North Penna. R. R. Depot.]

Charles H. Boutcher	211 N. 3d	Easton, Pa.
S. Wilmer Cannell	244 Chestnut	Torresdale, Pa.
John Cooke		Cheltenham, Pa.
William L. Dunglison		Bethlehem, Pa.
John Emory		Montgomery Co., Pa.
Mary D. Fox		Montgomery Co., Pa.
Robert B. Haines		Cheltenham, Pa.
Nicholas Guilbert	432 Chestnut	Montgomery Co., Pa.
Benjamin Jones, Jr.'s, Estate		Bucks Co., Pa.
Charles R. King, M.D.		Andalusia, Pa.
Richard Penn Lardner	218½ Walnut	Chelton Hills, Pa.
Catherine M. Morris' Estate		Montgomery Co., Pa.
Lawrence Pepper	631 Walnut	Chelton Hills, Pa.
George Randolph	115 S. 7th	Montgomery Co., Pa.

Kensington Depot.

Henry H.G. Sharpless' Estate,	801 Chestnut,	Chelton Hills, Pa.
J. Ross Snowden	7 State House Buildings	Bucks Co., Pa.
Sarah Stratton		Bethlehem, Pa.
William W. Thurston		Bethlehem, Pa.

"West Philadelphia."

[This includes West Chester, Pennsylvania, and New York Railroad.]

D. Francis Condie		West Chester
Catherine Dill		Trenton
John H. Easby	633 Walnut	Media
John Elwyn		Portsmouth, N. H.
Ellen Evans		New York
Manlius G. Evans		New York
Rowland Evans	225 S. 6th	Montgomery Co.
Gills' Estate, care of J. Hewes Gill		Lewistown, Maine
Elisha K. Kane's Estate		Kane, McKean Co.
William H. Keichline	425 Franklin	Bristol, Pa.
Mary L. Keim		Bristol, Pa.
Robert W. Leaming	20 Strawberry	Montgomery Co.
Samuel L. Leiper's Estate		Chester Co., Pa.
George A. McCall's Estate		Chester Co., Pa.
George Martin, M.D.		West Chester
W. Y. McAllister	728 Chestnut	Wallingford, Pa.
George H. Moore		New York
Nathaniel Randolph's Estate, used by J. C. Turner		Chadsford
Albanus H. Smith		Hestonville
Susan P. Tilghman		Montgomery Co.
Joseph B. Townsend	709 Walnut	Montgomery Co.
Rev. Edward S. Watson		Lancaster, Pa.
Mary C. Wharton		Genesee, New York
William C. Wharton		Boston, Mass.
Alfred T. Young.		Bristol, Pa.

"Baltimore Depot."

[This includes all living south of Philadelphia.]

J. Hubley Ashton		Washington, D. C.
Mrs. Emily M. Curwin		West Haverford
Frederick S. Eckard's Estate		care of P. S. Arnu
James R. Eckard		West Haverford, Delaware Co.
Jacob R. Eckfelt	U. S. Mint	Delaware Co.
William Ely		Lenni Mills, Delaware Co.
Jonathan Foltz, M.D., U.S.N.		Washington, D.C.
Sarah L. Gilpin		Delaware Co.
Constant Guillou	615 Walnut	Darby Road, Delaware Co.
William S. Hills		Wilmington, Del.
J. Ledyard Hodge		Washington, D.C.
Andrew A. Humphrey		Washington, D.C.
William Kirk		Kirkwood, Upper Darby, Del.
Mrs. Agnes C. Norris	1424 Walnut	Wilmington, Del.
Francis Pearsall		Wilmington, Del.
Abraham L. Pennock	10 S. 12th	Delaware Co.
Caspar W. Pennock	10 S. 12th	Delaware Co.
Elizabeth D. Ronckendorf		New Orleans.
James Sellers		Upper Darby, Delaware Co.
David Sellers		Upper Darby, Delaware Co.

Non-Residents in the Country.

Samuel Gibson	Europe
John L. Le Conte, U.S.N.	Africa
Charles G. Leland	London

Unknown.

Zaccheus Collins' Estate
Rev. Chas. M. Dupuy
Robert P. Field
Wm. A. Hoffman
Robert E. McGuire

UNKNOWN.

Thomas Maskell's Estate
J. O. Sharp's Estate
Fanny M. Sharpless
Mary R. Smith
James M. West

inches
centimeters
D50 Illuminant, 2 degree observer
Density
Golden Thread
Colors by Munsell Color Services Lab
Don Williams

Extract from Mr. Freedley's Testimony, p. 102.

The residences are marked with black dots and the business addresses by red dots. The map extends from Federal on the south, to Thompson on the north, and between the Delaware and Schuylkill Rivers. The residents in Germantown are placed at the depot at Ninth and Green. Those residing in New Jersey are placed at the depot at Walnut Street wharf. The residents on the line of the North Pennsylvania Railroad are placed at the extreme lower corner of the map, at Front and Thompson. Those residing outside of the limits of this map are placed on the extreme north and south edges of the map. The residents on the line of the Westchester and Media Railroad, and those residing in West Philadelphia, are placed at Twenty-fourth and Chestnut, and those residing on the lines of the Pennsylvania Railroad and the Philadelphia and Trenton and New York Railroad are placed at Twenty-fourth and Market. All Stockholders living south of this city are placed at the depot of the Baltimore Railroad, at Broad and Washington Streets. Whenever there has been a doubt as to which railroad a Stockholder would take, care has been taken to place it at the site nearest to Broad and Christian Streets.

inches
centimeters
D50 Illuminant, 2 degree observer
Density
Golden Thread
Colors by Munsell Color Services Lab

Exhibit No. 42.

Meeting of Directors, June 3, 1869.

Present—Messrs. Williams, Norris, Lewis, Biddle, Wharton, Cramond, Hare, Waln, McCall, Willing, Secretary and Treasurer.

The following transfers were approved:—

George Helmuth to Ernest Zantzinger.
Ex'rs Francis West " James West.
Adm'r Ann Denckla " Julia W. Biddle.
Samuel J. Sharpless " Wm. Brooke Rawle.
Sarah W. Stone " Mary Williamson.
E. A. Washburn " Clement Buckley Newbold:—

The following presents were received, for which the Librarian was directed to thank the donors:—

Sixty volumes Theological works, from Robert C. Clark.
Allibone's Index to N. Test., from the author.

The Treasurer reported the following shares forfeited agreeably to the Charter and Laws of the Company:—

Ed. Burd Grubb,
Arch. McCall's Est.,
Charles G. Poulson.

Mr. Williams laid on the table a certified copy of the will of the late Dr. James Rush, in which the Library Company is made the devisee and legatee of his large estate, Mr. Williams being executor of the will. The Executor requested that the Board would take immediate steps to ascertain the decision of the Library Company upon the question of accepting the devises and bequests contained in Dr. Rush's will on the conditions therein expressed. Whereupon it was

Resolved, that a special meeting of the Library Company be held on 29th day of June at 12 o'clock M., for the purpose of considering the propriety of accepting the devises and bequests contained in the will of the late Dr. James Rush on

the conditions therein expressed, and of applying for appropriate legislation to carry the same into effect.

Resolved, that the Secretary be directed to publish notice of this meeting in four of the principal papers of the city, for at least twenty days before the time fixed for the same.

Messrs. Hare, McCall, and Wharton were appointed a Committee to examine the will of Dr. Rush, and report upon the legal and other points involved in accepting the trust therein created, and to report on the same at an adjourned meeting of the Board to be held on Thursday next, the 10th instant.

Adjourned Meeting of the Directors, June 10, 1869.

Present—Messrs. Williams, Lewis, McCall, Biddle, Wharton, Cramond, Waln, Secretary and Treasurer.

~~Mr. McCall reads report of Committee.~~
~~Adjourned to Thursday.~~

The Committee on the Acceptance of the Devise of the late Dr. Rush reported progress, and requested permission to take the advice of counsel, which was granted, and the Committee was continued with instructions to report at an adjourned meeting on the 24th inst.

Exhibit No. 43.

Report of the Committee Appointed June 3, 1869.

In the handwriting of Mr. Peter McCall.

The first question to which we have directed our attention is whether it would be the duty of the Library Company, should they accept the devise, to remove their books from the building in Fifth Street to that erected under Dr. Rush's will: because if such be their duty, then the location of the building to be erected by Mr. Williams is a matter of primary importance in determining to accept or refuse.

In the will dated 26th February, 1860, Dr. Rush gives his whole estate to his Executor in trust, after providing for annuities, "to erect a fire-proof building sufficiently large to "accommodate and contain all the books of the Library "Company of Philadelphia (whose Library is now at the "corner of Fifth and Library Streets), and to provide for its "future extension."

And "to convey the same with the lot of ground whereon "it is erected unto The Library Company of Philadelphia, "etc., for *the uses and purposes of their Library*, and for *no* "*other use or purpose whatever*."

The first trust as to the residue is—

"To keep the real estate in repair, etc., and to make from "time to time such additions to the Library building as may "be found necessary for the extension and preservation and "convenient use *of the said Library*, and all additions thereto."

"*The said Library* is to be kept open from 9 A.M. until "at or near sunset," etc.

In his codicil of 18th April, 1867, the testator says:—

"I have given and devised the greater part of my estate "to my executor for the purpose of erecting for the Library "Company of Philadelphia, a building not only large enough "to *contain their present books*, but also their probable increase "for many years to come."

We incline to the opinion that the spirit of the will requires that the books belonging to the Philadelphia Library Company should be removed to the new building; and that the testator did not contemplate the existence of several Library buildings, in different parts of the city, in which the books of the Library might be distributed at the discretion of the Company.

It is not inconsistent with this view that the testator designates the building to be erected and all his property devised and bequeathed for the use of the Philadelphia Library and the books purchased with the proceeds thereof as "The Ridgway Branch of the Philadelphia Library."

Unless it is very clear (which we do not think it is) that

the Library Company would fairly comply with Dr. Rush's intentions in retaining the mass of their books in their present building or in some other building to be erected by them convenient and easily accessible to the stockholders, it is obvious that the location of the building to be erected under Dr. Rush's will enters vitally into the question of acceptance or refusal.

Until that point is settled it seems premature for the stockholders to discuss the question.

The Committee are free to say that they regard the lot at the corner of Broad and Christian Streets as an ineligible site for the Library; and that if the building should be erected on this lot it would be a matter for very grave consideration of the stockholders whether they should accept—the more especially as they are debarred by the will from issuing new shares, and their endowment appears limited to the annuity fund.

In the handwriting of Mr. F. B. Vogel.

In this connection another point has pressed itself on the consideration of the Committee. If they are rightly informed, Dr. Rush contracted for the purchase of the lot of ground at the corner of Broad and Christian Streets, within one month of his decease, and obtained from Mr. Williams, as his then intended executor, a promise of some kind that he would erect the projected Library Building on that lot. This purchase was a verbal one, and the Committee think that not only is the Executor not bound by it, but that he cannot lawfully carry it into effect without the consent of the residuary devisees. But they understand that Mr. Williams, influenced by his promise, intends to select this lot under the power given to him by the second paragraph of the second codicil, by which he is authorized "under a broad and thoughtful foresight, to increase the size "of the lot (to be purchased) and select any situation he "may deem most expedient, without any regard to any pro- "vision of my will or codicils." The limit of position originally fixed had been between Fourth and Fifteenth

Streets and Spruce and Race Streets, and its size not less than 150 feet square. The Committee are agreed that this new discretion given by the codicil is a purely personal one, involving the exercise of an individual judgment, as to what would be for the real interests of the institution, unbiassed by any regard for the later wishes or preferences of the testator himself, especially such as have been communicated in no legal or binding form. If by the express terms of the Codicil this power of selection is to be exercised "without regard to any provision of my will or codicils," how much more must it be so, regardless of any merely verbal directions, however sacred they might be regarded by Mr. Williams, if it concerned only his own private interest. But there is still another aspect of the case.

The highest position that could be taken by Mr. Williams is that the direction assented to by him amounted to a trust which he was bound to perform. But, if this were so, then it was a disposition of the testator's estate for purposes of charity, within a calendar month of his death, and therefore void, and not the less so because it was only verbal.

There have been many cases in England where secret trusts intended to evade the provisions of the Mortmain Acts, grafted on devises apparently absolute, have been declared void, and the property held to revert to the heirs of the testator. The question in such cases is, always, whether the devisee considers himself morally or conscientiously bound to carry out the wishes of the testator privately expressed, or as being perfectly free to exercise his own private judgment in the disposition of the property. In the opinion of your Committee, Mr. Williams would probably be held to stand in such a position, and on a bill filed by any one in interest, could be required to answer whether the selection of this location was made according to the best of his own personal judgment as to what was best for the institution, regardless of any promise to or request by the testator. The result of such an inquiry hereafter instituted might indeed be very disastrous. For, if Mr.

Williams, having acted on this secret trust, and confessing himself to have done so, should select this lot and erect the Library Building on it, the heirs of Dr. Rush might claim that the gift was void in whole or in part, and assert a forfeiture under the provisions of the act. Whether they could succeed in their contention, the Committee do not venture a positive opinion; it is sufficient to say, that they entertain very grave doubts on the subject. They need only further say that the establishment and endowment of a Library, constitute undoubtedly a "charity," within the Act of Assembly, and that they incline very strongly to the opinion that not merely an independent gift to charity, but the modification of the scheme of a charity previously established by the testator, is prohibited within the calendar month.

In the handwriting of Mr. Peter McCall.

The next question we have directed our attention to is, whether the whole of Dr. Rush's estate, with the exception of the annuity-fund, is devoted to the purchase of a lot and the erection of the new building; or whether the executor has a discretion to employ so much thereof as he may think proper for those objects, leaving the residue for the purchase of books and current expenses of the Library.

We must confess that this question is not without difficulty; and this difficulty arises mainly from the language of the codicil of 18th April, 1867.

"Now, as I do not desire that the Library Company "shall have an income greater than is required to provide "for the legitimate (not a competing) increase of the Li- "brary and their current expenses (not to be so large as to "invite extravagance and waste), for which purposes the "sums to be set apart to secure the legacies and annuities "given by my said will and testament will be sufficient, I "hereby authorize and *direct* my said executor to expend "the *whole remainder* of my estate in the purchase of a lot "and the erection of the Library Building, construction of

"bookcases, etc., leaving the said Company only an income "sufficient to defray the ordinary and strictly appropriate "expenses of such an institution."

Then immediately follows the testator's observation in regard to the evil effects of large annual incomes of corporate bodies. The language of this codicil is very stringent. It not merely authorizes but *directs* the executor to expend the *whole* remainder in the purchase of a lot, and erection of the Library Building, construction of bookcases, etc., and for the reason given, that he does not desire the Library Company to have an income greater than is required to provide for the legitimate increase of the Library and their current expenses, for which purposes he considers the sums set apart to secure the legacies and annuities sufficient.

Do then the concluding words, "leaving the said Com- "pany only an income sufficient to defray the ordinary and "strictly appropriate expenses of such an institution," qualify the force of the previous direction to expend the *whole* remainder, so as to give to the Executor a discretion to reserve an endowment fund over and above the sums set apart for the annuities?

There seems great difficulty in their interpretation, because it expunges the word *whole* in the previous direction. The more natural interpretation connects the concluding sentence "leaving," etc., with the antecedent declaration that the annuity fund would be sufficient for the ordinary and strictly appropriate expenses of the Library; as much as to say, the whole remainder must be devoted to the lot and building. The library will then have left, in the annuity fund as it falls in, an adequate source for the strictly appropriate expenses of the institution.

Undoubtedly the will and codicils must be read together and harmonized if possible. If they cannot be harmonized, the codicil, as the latest expression of the testator's will, must govern.

It is not easy to reconcile the will and codicil.

The will leaves the amount to be expended in the purchase of the lot and erection of the building discretionary

with the executor, and devotes the income of what should remain to certain trusts, the last of which is to the increase and extension of the Library.

The codicil directs the application of the whole remainder to the lot and building. How can these provisions be reconciled?

While it seems to us the better opinion that a strict compliance with Dr. Rush's will would not authorize the retention of a fund for the increase and extension of the Library over and above that set apart for the annuities, we think it would be perfectly proper to retain a fund for the payment of taxes on the building, because the payment of taxes is essential to the continued ownership of the property. And a majority of the committee are inclined to go farther, and say that a liberal construction would authorize the retention of a fund for payment of salaries and contingent expenses.

The question of a fund for increase and extension of the Library is, however, one, in our view, of secondary importance, for the following reason:—

From present appearances it is not likely that after the purchase of the lot, erection of the building, providing for annuities, taxes, salaries, and contingent expenses, any considerable surplus would remain.

The amount of Dr. Rush's estate was sworn under		$1,000,000
Deduct U. S. succession, and State collateral taxes, 11 per cent.	$110,000	
Commissions and expenses of administration .	50,000	
Annuity fund . . .	150,000	
Fund for taxes and maintenance . . .	100,000	
Fund for salaries . .	100,000	
Contingent fund . .	75,000	
Cost of lot . . .	130,000	715,000
Leaves for building and equipment . .		$285,000

After all, the most important question for the consideration of the stockholders is, where is the building to be located? If in the right place, then with no other fund for the increase and extension of the Library than that set apart for the annuities, they would instantly and gratefully accept Dr. Rush's bounty. But if in a site not easily accessible and not suited to the convenience of the stockholders and the public, they would probably arrive at a different conclusion.

In view of the importance of the question involved, we venture to suggest the propriety of taking the opinions of eminent counsel not connected with the Board, on such points as may be deemed desirable.

In conclusion the Committee desire to express their very decided opinion, which, if concurred in by the Board, they think should be communicated to the stockholders, that there is no necessity for their acting on the subject of the acceptance of the provisions of Dr. Rush's will until the building is finished by Mr. Williams and tendered to them.

In the handwriting of Mr. Wharton.

DEFENDANT'S PROOFS.

Sixteenth Meeting, April 12, 1872, at 12 M.

Present—Messrs. RAWLE, MCMURTRIE, JUNKIN, JOHNSON, and EXAMINER.

HENRY J. WILLIAMS, sworn.

Mr. Johnson states, that he has called upon the plaintiffs to produce the report referred to by Mr. Wharton on page 31 of his testimony, in these words: "And to this subject a part of the report was directed, which report was read in the presence of Mr. Williams at the next meeting," viz., the next meeting after the tenth of June, 1869.

In reply Mr. Rawle states, that so much of the report referred to as was in writing, consisted in the opinion of counsel printed upon pages 119 and 120 of the Exhibits. The rest of the report was oral. This was at the meeting of Directors of June 24, 1869.

Q. Please state how many meetings of the Board of Directors of the Library Company you attended subsequent to Dr. Rush's decease?

A. Two, sir, and only two.

Q. At what times?

A. I would not be able to give the dates from memory; the record shows that the meetings were on the third and the tenth of June. I was present at those meetings and at no other. I am sure of this from the fact that in my letter to Dr. Norris, dated June 22, I announced my intention not to attend the next meeting, and I am sure I never attended any meeting after the letter.

Q. Do you remember stating at either of these meetings the fact of any promise to Dr. Rush as to the location of the building to be erected under his will?

A. I do not; I speak to the best of my recollection; I did not mention it then.

Q. Was any report ever read in your presence at any meeting of the Board of Directors, directed to the point of any supposed disqualification on your part growing out of any such promise?

A. No, sir.

Q. Was any such report ever made orally in your presence at any such meeting?

A. To my recollection, certainly not.

Q. Do you remember ever hearing read at any such meeting the opinion of counsel set out on page 119 of complainants' testimony?

A. No, sir; by the document you have shown me, it appears that that opinion was read on the 24th of June; I was not present at that meeting, and heard nothing of the opinion till long after.

Q. It is stated by Mr. Wharton on page 31 of complainants' testimony, that at a meeting of the Board of Directors, "there were doubts expressed as to whether the effect of such a promise, if binding, made within a calendar month of Dr. Rush's death, would not be invalid and perhaps affect the whole bequest considered as a charitable one, so as to let in the next of kin of the testator. This, I know, was in Mr. Williams' hearing, or under such circumstances that he must have heard." State whether or not such doubts were expressed in your hearing.

A. I have not the slightest recollection that the effect of my promise was referred to in any way at either of those meetings. I do recollect perfectly that in the course of objections which were made to Dr. Rush's will, it was remarked, not by myself, that I had the right to spend the whole of his estate on the building. I answered in substance that I had that authority, but I didn't intend to waste the estate, but would put up the building as economically as I could in compliance with Dr. Rush's directions, and I hoped that I should be able to save a very con-

siderable surplus. Mr. Henry Wharton then remarked, and it struck me forcibly, because it had not occurred to me before, that if there was a surplus it would belong to the heirs. I expressed my dissent to that opinion, and in my letter to Dr. Norris, dated June 22, I specifically referred to this point, but not at all in connection with my promise.

Q. On page 36, of complainants' testimony, in answer to the following question, "Did Mr. Williams ever say to you that as a member of the Committee for purchase, he desired that lot on Juniper Street to be bought," Mr. Wharton answered "I cannot say that he did so in so many words. I believed at the time, from what was said by Mr. Williams, that he had agreed the purchase should be made." State whether or not you ever said anything that gave ground for belief, by Mr. Wharton or any body else, that you had agreed the purchase should be made, and if so, what?

(Objected to as leading.)

A. I do not think I ever said anything from which that inference could be drawn, for I was always personally opposed to that lot, and could not therefore have expressed an opinion favorable to it.

Q. Apart from anything connected with your knowledge of Dr. Rush's will, were there any reasons why you were opposed to the selection of that lot as a site for a library building?

(Objected to.)

A. At the time I acted with that Committee, I did not believe Dr. Rush would live a month. His will required a lot 150 feet square, to be increased at my discretion. I would not, therefore, have assented to the purchase of any lot of less than that size. This lot was mentioned to Dr. Rush as a proposed site for the Library, and he concurred with me in disapproving of it. It has but 110 feet front on Locust Street, running, I think, 240 feet deep, separated from the rear ends of the Broad Street lots by an alley eight feet wide, and of course the windows of the Library

would look directly upon the nuisances which abound upon the ends of all city lots; that alone to me would have been a capital objection.

(Complainants' counsel, under the impression that the proper time to object to testimony is when it is proposed to be read as testimony, and there can be a ruling on it, do, however, to avoid being concluded, if the opinion be erroneous upon the rule of practice, desire the Examiner to note that they object to such testimony as has been or may be given that is not strictly in accordance with the rules of testimony, as being hearsay, conversations with other persons, and the like.)

Q. Had you observed whether or not there were such nuisances at the ends of the lot to which you referred?

A. My recollection is that I had; I walked around the lot and went up that alley, I think with Mr. Wharton.

Q. On page 23 of complainants' testimony, after having given his version of what occurred at the interview in which you communicated Dr. Rush's testamentary intentions, and the fact of the selection of the Broad and Christian Street lot, Mr. Wharton testifies as follows: "After that there were two or three interviews, but I don't remember anything of them, except my recollection of another statement by him after this conversation, that he had applied since the purchase of this lot, to Mr. Thomson, President of the Pennsylvania Railroad Company, with reference to the purchase of their dépôt on Market Street, below Broad, but he had given up the idea on account of the price of the lot, which I think he said was $250,000. I am very certain that this was after Mr. Williams' statement of the former purchase, and either just before Dr. Rush's death, or it may have been very shortly after. It left upon my mind the impression that the purchase of the lot on Broad and Christian Streets was not then a final one." Please state the date at which you called on Mr. Wharton to communicate Dr. Rush's intention, the date of Dr. Rush's death, and then say whether or not there were any interviews between

those dates upon any subject between Mr. Wharton and yourself.

A. It will be necessary to make a little explanation to show how I can speak confidently with regard to that date. On the 18th of May, Dr. Rush directed me to go and purchase the lot at Broad and Christian Streets from Mr. Charles Smith. I went down to Mr. Castle's, who was the agent of Mr. Smith, and after some conversation purchased the lot. I think it was in the morning. The contract, which I have here, was written by me in my own handwriting. It was drawn up in presence of Mr. Castle, but Mr. Smith was not present, nor did I ever see him with reference to the whole transaction. I gave him (Mr. Castle) a check for $1000, dated May 18th, and left the check and the unsigned contract with him, to take to Mr. Smith. The date of the contract is filled in in Mr. Castle's handwriting, "May 18th, 1865." The receipt was written in Mr. Castle's handwriting; both signed by Mr. Smith, and both witnessed by Mr. Castle. I will not be sure whether I received this on the same day or the succeeding one, the 19th; but it was delivered by the 19th. According to the best of my recollection, it was two days after that, that Dr. Rush asked me the question whether the Library Company would approve of the location. I answered I could not tell; but if he desired me I could ascertain it, if he would permit me to make known the contents of his will to the Directors. He replied to me, he did not want them all to know it. I suggested that I could make it known to two or three of them, and ascertain their opinion. He said, "Who will you choose?" I answered, "Col. Biddle and Mr. Wharton." Now I am unable to say whether I mentioned to him that those gentlemen composed with me a committee of the Library Company to report on the purchase of a lot. He answered, "Well now, go and do it at once." I said, "Then, Doctor, you must allow me to mention the contents of your will to those gentlemen." He said "Certainly," and I went immediately down to Mr. Wharton's office. It was, therefore,

on the 20th or 21st of May that I called on Mr. Wharton. Dr. Rush died at 9 o'clock on the morning of the 26th of May. I am very confident that I did not leave Dr. Rush's bedside from the 20th or 21st of May, except to go and get my meals at my house, till the date of his death, and during that period I was certainly never at Mr. Wharton's office, and believe that I never saw him. I will mention also that during these four or five days I was in momentary expectation of Dr. Rush's death, and I am sure I did not leave his room more than was absolutely necessary.

Q. State whether or not you ever applied to Mr. Thomson, President of the Pennsylvania Railroad Company, with reference to the purchase of the Company's dépôt on Market Street below Broad?

A. I did not. I don't know Mr. Thomson; I never spoke to him, and should not know him if I met him in the street. I am equally sure I never sent any note to him. I learned the price and size from Mr. Pratt, a real estate agent, and I think I received it before the 3d of May, and I must have communicated it to Mr. Wharton about that time. When Mr. Wharton and myself were appointed a committee to purchase a lot, I was staying at Dr. Rush's house, and at his direction I made inquiries about a great many lots, in which I was assisted by Mr. Pratt, and among them the Pennsylvania Railroad lot. On May 3d, I wrote Mr. Pratt the following note:—

MR. PRATT, 108 SOUTH FOURTH STREET,

Dear Sir: The prices at which you say we can have the lots in the plan are so extravagant, that we decline taking them into consideration.

Yours, &c.,

H. J. WILLIAMS.

MR. PRATT. May 3d, 1869.

I return the plan sent to me.

The note to Mr. Pratt and the plan referred to in that note are here offered by defendants in evidence.

That fixes the date of the termination of my communications with Mr. Pratt, and it was about that time or before it that I mentioned this lot to Mr. Wharton.

Q. Did you or did you not, subsequent to the agreement to purchase the lot at Broad and Christian, prior to Dr. Rush's death (or shortly thereafter), apply to any body, directly or indirectly, with a view to purchasing any other lot?

A. No.

Q. Please state what you said at any interview with Mr. Wharton during the period referred to, which was calculated to leave upon his mind "the impression that the purchase of the lot on Broad and Christian Streets was not a final one?"

A. I never said anything to him on the subject, never alluded to the purchase of another lot. I had bought the lot, paid part of the consideration money for it, had the approbation of Dr. Rush, supposed I had the approbation of the Library Company, and considered the matter, as regards the lot, finally and entirely settled.

Q. Did you or did you not tell him during that period, that you had applied since the purchase of this lot to Mr. Thomson, with reference to the purchase of their depot on Market Street below Broad, but had given up the idea on account of the price of the lot?

A. I never said anything of the kind, and could not have said so with truth.

Q. Between the 3d and 26th of May, what were your opportunities of observing Dr. Rush's physical and mental condition?

A. In the winter of 1869, I resided in the country, and came to town once a week, on Monday. Some time about the middle of April, 1869, I was informed that an attendant of Dr. Rush's had been sent down to tell me to come up to see him. I was accustomed to visit him once a fort-

night, and sometimes once a week regularly, and upon receiving this message, went up to his house. I found him in bed. He made light of his indisposition, but his servants thought him more indisposed than he appeared to think himself. I determined to remain in town instead of going to my country place. From that time I spent every day with him, but returned to my house at night, until nearly the end of April. He was entirely alone at night, with only two female servants in the house, and I thought him so ill, considering his great age, that I offered to come and stay at his house, if he desired it. I did so, and from that time was constantly with him, day and night, except occasional absences on business.

Q. Was the disease from which he was then suffering one which affected his mental condition?

A. Not in the least. I supposed his disease was an affection of the heart, and it was evidenced by the great rapidity of his breathing. He made eighteen inspirations during the latter part of his life while I made seven. They were not gasping, but rapid breathing. His mind was bright, and he was cheerful to a degree that used to astonish me when I saw him.

Q. How long had you known him?

A. Considerably over half a century.

Q. What change did you notice in his mental condition at any time?

A. He was, as old people usually are, slower in the operations of his mind. His memory was excellent and his faculties, except in that particular, unimpaired.

Q. Did you have conversations calculated to test his mental capacity during the last month of his illness, up to the day of his decease?

A. We talked upon almost every imaginable subject—metaphysics, architecture, history, and all the events of the day.

Q. And what was his mental condition as indicated by

his conversations and otherwise, up to the day of his decease?

A. Excellent in every particular, except as I have stated, rather slower in his conceptions and expressions. He had been a very rapid talker, but he became more measured and deliberate.

Q. It has been testified on behalf of complainants that you were appointed one of a committee of three to purchase a lot for the Library Company. State how you were appointed on that committee, and what you did as a member of it in the matter of examining sites and lots, and their suitability for the purposes for which you were appointed.

A. I speak from the record as to the time of appointment. It was on the 24th of April, 1869. Just before my appointment, Dr. Rush had said to me that he was very anxious to determine on what lot he should have the Library built, and desired me to find out the prices and the sizes of all attainable lots which I thought suitable for that purpose. This I think was just about the time of my appointment as a member of that committee. I set to work with a great deal of zeal to comply with Dr. Rush's wishes; walked all over the city almost, or that part of the city which I thought suitable for a Library, between the Schuylkill and Broad Street, and examined particularly all the lots on Broad Street between Vine and South. I reported the results of all these examinations to Dr. Rush and also to Mr. Wharton, as a member of the committee. Mr. Pratt, a real estate agent, heard that I was in pursuit of a lot for a public institution, and came to me, and through him I obtained information of the prices of all the Broad Street lots, of the Pennsylvania Railroad lot, with one exception, that of the Reading Railroad lot; that I obtained from Mr. Gowen. None of these lots suited the views of Mr. Wharton and myself, because of their prices, and the result of my interviews with Mr. Pratt is the letter given in evidence; and from the fact that the word *we* is

used in that letter, I conceive that I expressed to Mr. Pratt the opinion of Mr. Wharton and myself. Col. Biddle paid very little attention to the matter. I know of no lot to which my attention was called after May 3d, nor have I any recollection of conversation with Mr. Wharton after that date, although there may have been, up to my purchase of Dr. Rush's lot. I never saw any report of that committee, and do not know that any was ever made.

Q. Was an effort made, whilst you were thus acting, to ascertain all lots suitable for the Library Building, which could be procured?

A. I did not go below South Street, but between South and Vine, and the Schuylkill and Broad. I walked over the whole of the city, and reported to Dr. Rush every lot which I thought suitable for the Library. Mr. Craven had also been sent out by Dr. Rush for that purpose, and he had examined the lots south of South Street.

Q. Since Dr. Rush's death, has any member of the Library Company directed your attention to any lot as suitable for the Library Building, other than one of the lots examined by you prior to his decease?

A. No, sir. Mr. Fraley mentioned several lots on which he thought a library might be placed, but every one had been examined by me, reported to Dr. Rush, and rejected by him, either on the ground of size or of price.

Q. Was there not some lot rejected by Dr. Rush which you yourself approved of?

A. I think not. When I said approved of, I meant with reference to Dr. Rush's will. I knew what he had required me to consider, and except the Deaf and Dumb lot, Mr. Dundas's, the Pennsylvania Railroad lot, and Gen. Patterson's, they were all too small, and of all these the prices were too high, in my opinion.

Q. Since Dr. Rush's decease, have you examined as to whether there are any available lots suitable, in your opinion, for the Library Building, other than those examined before his decease?

A. I have examined none, because I know of no others. I have heard of no lot, which I consider suitable for the Library, *as* suitable as the lot at Broad and Christian.

Q. In your Answer you have given the prices of various lots in the city of Philadelphia. State when and how you ascertained those prices.

A. As to all lots, the prices of which are given on page 8 of my Answer, saving as to those north of Monument Cemetery, I learned the prices of almost all of these from Mr. Pratt, a prominent real estate agent. The price of the burnt depot I learned from Mr. Gowen.

Seventeenth Meeting, April 17, 1872, at 12 M.

Present—Messrs. RAWLE, MCMURTRIE, JUNKIN, JOHNSON, and EXAMINER.

Mr. WILLIAMS' examination continued.

Mr. McMurtrie states: I am instructed that at the meeting of the Directors of the Library held June 10, 1869, at which were present, as the rough minutes show, Messrs. Wiliams, Lewis, McCall, Biddle, Wharton, Campbell, Waln, the minutes state Mr. McCall read Report of Committee, which is stated thus: "The Committee on the acceptance of the devise of the late Dr. Rush reported progress and requested permission to obtain the advice of counsel, which was granted, and the committee was continued with instructions to report to an adjourned meeting on the 24th inst." This report was in writing, part written by Mr. McCall, part by Mr. Wharton, and part by Judge Hare. It is here produced and marked Exhibit I. The reason why no minute of this meeting appears in the regular minute-book of the Company was that the engrosser of those minutes, finding no other business stated to be done but a report of progress, and either being ignorant of or having forgotten that that report was in writing, thought it proper, to save

himself the necessity of copying what he supposed to be an immaterial matter, to omit the statement of that meeting altogether, and to report what had occurred at the meeting of the 10th, as having occurred at the meeting on the 24th. When the proof was given of the minutes, the fact that a written report had been made on the 10th was forgotten or not known; as, upon the search then made, no such paper was found. These are the facts, as I understand them to have been from instructions that I have had. They may be more or less incorrect. The facts as they really were will be proved in due course.

Q. Mr. Williams, please examine the paper referred to in the foregoing statement as having been read on the 10th June, 1869, and state your knowledge of its contents obtained prior to this day.

A. Mr. Johnson showed me this report this morning; I have read it and am as well satisfied as I can be in relation to anything dependent upon memory, that I never saw it and never heard of its contents before to-day.

Q. Were you present at the meeting of the Board of Directors of the Library Company on the 10th of June, up to the time of its adjournment?

A. I left the Library Company on that evening to take the train which left Green Street a little after nine. The last train left at eleven, and this was the train before. I took that train from the Library and I left them in session. The meeting had not been a very pleasant one, and I got away as soon as I could. Our hour of meeting was certainly not later than seven, and I was there punctually at the time. I speak from my general habit, but I have no doubt, as the subjects to be discussed were important, that I was there punctually. I may also say that the occurrences of that meeting are strongly impressed upon my memory, because I felt so chagrined at the course which the Directors had taken.

Q. You were asked at the last meeting to say, whether you remembered stating at either of the Board meetings

which you attended subsequent to Dr. Rush's decease, the fact of any promise to Dr. Rush as to the location of the building to be erected under his will. Have you since then at my request endeavored to recall any such statement, and if so, with what result?

A. I have taxed my memory to the utmost; and although I may have alluded to my promise, I have no recollection of it, and certainly none of any important question or discussion in reference to it.

Q. Was the matter of your promise mentioned early after Dr. Rush's decease, anywhere?

A. I never made any secret of it, and I think it very possible, when the question of the site was stated, that I mentioned it, but I have no recollection of any particular time at which I mentioned it either to the Board or to any particular member of the Board. I may mention here also that since the meeting of June 10, no Director, except Mr. Lewis, who spoke once to me on the subject, and Col. Biddle, has ever spoken to me on the subject of Dr. Rush's will or his bequest.

Q. Were these questions discussed at the meeting of June 10, arising under the will, as to which you afterwards consulted your counsel? If so, how soon afterwards?

A. The next day after June 10—that is, the 11th or 12th, I put down in writing a series of questions in reference to Dr. Rush's will and my duty under it, which I thought embraced all the important points which were then present to my mind.

Q. Please look at this paper presented to you, and state whether you identify it in connection with these questions.

A. These are the questions in the rough which I sent to my counsel; they were copied and differently arranged in the copy, but I believe the substance is here. These questions and their answers were all sent to the Board in my letter of the 22d June to Dr. Norris.

Q. Were the questions referred to suggested by anything

which had occurred at the Board meeting immediately previous?

A. I think they were. They embraced all the objections which I recollected as having been made at that meeting and the previous one, and I sent Judge Strong's opinion to the Board as an answer to those objections.

Q. Why did you omit, in putting these questions, your disqualification or other possible ill effects which might result or had resulted from your promise?

A. Simply because I had not heard of it, for I am very sure that if I had heard the report which was presented here read, I would not have omitted a reference to its contents. I may also say, that if I had heard that report read I should most probably not have referred to the matter before the contributors, or written my letter to Dr. Willing.

Q. You have stated that your interview with Mr. Wharton and Col. Biddle was subsequent to your purchase of the Broad and Christian Streets lot. State now anything said or done by Dr. Rush which brought about that interview, and whether the result of it was communicated by you to Dr. Rush.

A. After I made the purchase from Mr. Smith, Dr. Rush expressed the greatest pleasure at its accomplishment, and said he would now die in peace. One or two days after (that would bring it to about the 20th or 21st of May), he asked me if I thought the Library Company would make any objection to this site. I told him I didn't know. He asked me if I could not ascertain whether they would or would not. I answered, "If you will allow me to communicate to them the contents of your will, I certainly can." He said he did not want them all to know it, and I then mentioned the names of Col. Biddle and Mr. Wharton as two of the Directors, and asked him if I might communicate it to them. He said, "Yes, go and do it." I left Dr. Rush's house; came down to my own; met Col. Biddle and went with him to Mr. Wharton's office, Walnut below Sixth; we met Mr. Wharton standing in his office, and during the

interview none of us sat down. I stated to these gentleman that Dr. Rush had sent me to make a confidential communication to them, that he had bought a lot at the corner of Broad and Christian Streets, 300 feet front by 527 feet deep, for the purpose of erecting a building for the Library, but I did not then say by whom the building was to be erected. Mr. Wharton said, in substance, he thought it was too far down, and perhaps that impression was repeated by Col. Biddle, but I am not sure of that. I then said, as nearly as I can recollect in these very words, "Well, gentlemen, Dr. Rush has given almost the whole of his estate, amounting to nearly a million of dollars, for the purpose of erecting a fire-proof building for the use of the Library on that lot, upon which he has set his heart, and he wants to know whether, under these circumstances, the Library Company will object to the location." Mr. Wharton said that the Committee had no power to bind the Board, but that in his opinion, considering the magnificence of the gift, the Library Company ought not to, or would not (I cannot say which was the expression), make any objection to that site. Col. Biddle assented to Mr. Wharton's opinion. I expressed my satisfaction at this result, and asked them if I might communicate their opinions to Dr. Rush. They said "Certainly," and I left them, took the cars and went up to the Doctor's house, and related to him all that had taken place. He said, "Now I am satisfied."

Q. Please state the circumstances under which the promise was given alluded to in bill and answer.

A. I think it was about the second day after the interview with Mr. Wharton when I was seated by Dr. Rush's bedside. I think the lot had been the subject of conversation between us, when the Doctor turned to me and said, "Harry, now you will promise me to put the building upon that lot." I said, "Certainly, Doctor, if you desire it, I will promise you that I will put it there and nowhere else." The Doctor merely expressed his satisfaction; I think he

said, as near as I can recollect, "Well, I'm very glad it's now all settled."

Q. Was this promise made before you had ascertained the position and eligibility of different lots in the city of Philadelphia?

A. Weeks after; I have no recollection of any examination of lots after May 3, the date of my letter to Mr. Pratt. I think the Broad Street lot was called to Dr. Rush's attention before that date, but certainly immediately after.

Q. Was the question as to your duty under Dr. Rush's will with regard to the selection of a site submitted by you to counsel?

A. I am sure it was; I am certain Judge Strong gave me an opinion upon it; the opinion was dated July 9, 1869, and was in these words:—

"As executor you are guided by the written will. In the exercise of the discretion reposed in you by that instrument, you may regard Dr. Rush's views and wishes orally expressed; but after all, *your* judgment, however it may be made up, must be your guide in matters left to your discretion. You will remember that Mr. Meredith and Mr. McMurtrie suggested the Court might control your discretion, if it is *fettered* by any oral promise or verbal direction. The suggestion I think uncalled for and unfounded, but it is best to avoid unnecessary reference to oral instructions given by the testator."

Q. In pursuance of this advice, as to your duty to act upon your own discretion, unfettered by promises, in selecting a site for the Library building, did you consider the question of such selection in accordance with your judgment, irrespective of your promise, and if so, with what result?

A. I did; after Dr. Rush's death, I was obliged, of course, in order to assume the duties of executor, to take the ordinary oath, which obliged me to carry out the directions of the will. This was a legal as well as a moral obligation; and under it I did then and have done ever since,

considered the question as to the site of the Library entirely irrespective of any promise made to Dr. Rush, or of any wish expressed by him, and I became then and have continued ever since convinced, according to the best judgment I am able to form, that this lot possesses advantages which are attainable in no other *with* which I am acquainted.

Q. Is not this judgment influenced by your promise?

(Objected to as leading.)

A. Not that I am conscious of at all. I believe that if I had made no promise and had not known the wishes of Dr. Rush, my judgment would have been the same.

Q. Had your judgment been different, would you not have felt obliged under your promise, which in the Bill is alleged to have been spoken of by you as being "binding as an oath," to have chosen the Broad and Christian Streets site notwithstanding?

(Objected to as leading.)

A. No, sir. If my promise to Dr. Rush and my oath as Executor had been at all in conflict, I would have resigned my Executorship at once and left some other person to put up the building.

Q. I omitted to ask you, while on the subject of your interview with Mr. Wharton, what was said about books and endowment.

A. Nothing, sir; I knew perfectly well that Dr. Rush by his will had not given me authority to buy a single book, and that almost his whole estate was devoted to put up the building; I could not have said it was given to buy books.

Q. Mr. Wharton says, on page 25 of his testimony, that at the Director's meeting of June 3, 1869, you "mentioned the fact that there were some verbal bequests to relations of Dr. Rush of articles of wearing apparel and jewelry, I think." What was ever said by you at that meeting about wearing apparel and jewelry?

A. I did not mention wearing apparel and jewelry,

because all the wearing apparel and all the jewelry had been given to me by a special clause in Dr. Rush's will, and I could not, therefore, have asked the Company's assent to such matters.

Q. Please state what was said, as you remember it, at that meeting, with regard to any articles as to which Dr. Rush had expressed a desire of disposition, but not in a form legally binding.

A. I stated to the Directors that Dr. Rush within a short time before his death had made various dispositions of furniture and objects of art, and had asked me to make a memorandum of them. I made such memorandum in pencil, which I afterwards reduced to ink and read over to him in the presence of a witness; that these articles amounted in value to about $2000; that several of them were given to me, but that I declined to take any of them, and if I took them, I should purchase them at the appraised value: I spoke for others and not for myself. I then said that these gifts were not in legal form, but that I had assured the Doctor the Library Company would make no difficulty upon that score, and that if the Board would give me their assent I would assume all the pecuniary responsibility and carry out the Doctor's wishes. There was not the slightest response made to this suggestion. No questions were asked with regard to the paper, or to the articles, and no reference was made to this suggestion of mine at that meeting or at the next, the only two I attended.

Q. It is testified to by Judge Hare, on page 66 of the complainant's testimony, "I did not understand this to be a request requiring an answer from the Directors, but a suggestion looking to a request at a future day when the Directors should be in a position to give an answer." It is said by Mr. McCall, on page 90, "I remember also that Mr. Williams did state that Dr. Rush had verbally directed certain articles to be given to his friends as remembrances, and that if the Library Company accepted it would be for them to say whether they gave their assent to these gifts."

In the letter written by the Secretary of the Board on the 12th of January, 1871, in reply to yours of December 30, 1870, "the impression on the minds of the Directors was, that you did intend to follow out the wishes of Dr. Rush in relation to those articles, and that your allusion to the subject was a notice that you would do so." After having had your memory on the subject thus refreshed, can you say whether or not your allusion to the subject referred to was, as the Secretary writes, "a notice that you would do so?"

A. All that I said upon the occasion referred to, was exactly what I have stated, that if the Board would give me their assent I would assume the pecuniary responsibility and carry out Dr. Rush's wishes. That was all I said at that meeting on the subject, and it was never afterwards referred to either by the Board or by individuals. I understood this to be a distinct request and an immediate one, but what I have testified to is all that I said.

Q. Did you afterwards act in accordance with Dr. Rush's desires as though an assent by the Board had been given to your request as you understood it to have been made?

(Objected to, unless in the presence of the complainant.)

A. I stated all the circumstances to Judge Strong and Mr. Judson, and asked them if I could not be permitted to carry out Dr. Rush's wishes. They advised me strongly against it, and I wrote to some of the beneficiaries, and mentioned it to others, that I could not comply with those wishes, because I had not received the assent of the Library Company; but I told them that I had the right, without consulting anybody, to dispose of those articles at their appraised value, and if any of them chose to take them on those terms they were at their service. Some of them took them on those terms; others declined.

Q. Where you have carried out these wishes by delivering the articles to the legatees, without their being compelled to pay anything for them, has their appraised value

been made up to the estate from any other and what source?

A. Some of these articles were given to me nominally for the purpose of distribution among his friends and family. As those persons were not able conveniently to pay for them, I sent them to them, and paid for them myself. The value thus made up did not exceed $700.

Q. On page 30, Mr. Wharton says, "At the last meeting at which Mr. Williams was present, he was very much irritated by the unwillingness of the Directors to advise an immediate acceptance of the bequest of Dr. Rush without legal advice as to the constitution of his will." To what extent did you request such acceptance and for what express purpose?

A. I was very anxious that the Board and the Company should express their wishes in regard to Dr. Rush's bequest, because I thought it might influence me in my decision as to the building, but I did not suppose at all that any expression of opinion thereon would be conclusive, and I certainly felt what I expressed in my letter to Dr. Norris, that I should not have regretted it if they had rejected the whole thing, in consequence of the extreme coldness and indifference with which the provisions of his will and the expression of his wishes had been received.

Q. Did you at any meeting of the Board express your opinion that they could give a binding acceptance until after the building had been erected and tendered?

A. I have no recollection of ever expressing any such opinion. I am pretty sure I did not, for I did not entertain it. I thought then as I think now, that they might accept it provisionally, but could not conclusively, until the building had been completed.

Eighteenth Meeting, May 3, 1872.

Present—Messrs. RAWLE, JOHNSON, JUNKIN, and EXAMINER.

Mr. WILLIAMS' examination continued.

Q. You have spoken about your stating to the Directors of the Library Company, that you would assume the pecuniary responsibility of carrying out Dr. Rush's wishes if they would give their assent to your so doing. What pecuniary responsibility did you mean you would assume if their assent was given?

A. I did not believe that the Library Company could at that time give me any legal authority to dispose of Dr. Rush's effects, which had not been actually disposed of by his written will. I supposed I should have, at some future time, to file an account, and submit it to an auditor, and that it would depend upon the Library Company at that time to decide whether I was to be made responsible for these effects or not; if the assent which I desired then to be given by the Library Company was not ratified by them, I should have to be charged with their value; and if Dr. Rush's bequest was rejected by the Library Company, I should of course have to account for them to the Ridgway Library. It was their moral rather than their legal assent which I was desirous of obtaining.

Q. State your reasons for desiring an immediate acceptance by the Directors and the Library Company of the provisions of Dr. Rush's will.

A. My reasons for desiring an immediate acceptance were these. It was my wish when I laid Dr. Rush's will before the Library Directors, having no doubt that it would be cordially and instantly accepted, to have acted with the Directors in every way that suited their wishes, so far as I considered myself permitted by the provisions of Dr. Rush's will, and although I did not believe that they could bind either themselves or the Company, yet I would have

been glad to have learned that they were willing to carry out the Doctor's wishes, as he had expressed them to me.

Q. You have stated on page 19 of your Answer, "I never heard any arrangement even suggested to make up the additional amount which would be required to purchase another lot." Do you desire to make any explanation of that statement?

A. I would like to modify my answer by striking out the words "even suggested," because I know that Mr. Fraley, in his letter of August 4, 1869, asked me whether I would be willing to abandon the proposed site, if the Library Company or its friends would contribute from their own proper funds, for the purchase of such a lot, a sum equal to the difference between the purchase of such a lot and the cost price of the lot on which I proposed erecting the Library Building. I gave no specific answer to this question, and I think it probably escaped my recollection when I wrote my Answer. I heard from no other source anything about it, and I heard nothing but the question.

Q. State whether your remembrance that the report as to your disqualification was never read in your presence has been corroborated or refuted by anything written by your counsel concerning the points discussed with him immediately after that meeting.

A. Immediately after the last meeting before the Examiner, on the 20th of April, I wrote a letter to Judge Strong to ask him his recollection in reference to the time at which he heard of my alleged disqualification as to the selection of a site for the building, and I received from him immediately an answer, which I annex (marked Exhibit 2), which corresponds exactly with my recollection.

Q. Are you certain of the hour of the departure of the train in which you returned in the evening of the 10th June, 1869?

A. I spoke according to my recollection, but I am not so confident of the hour; but I am very confident that I left the Board before it adjourned, and mentioned to one

of the Directors, or to the Board, I am not certain which, my reason for doing so, which was not to miss the train to Chestnut Hill.

Q. Mr. Wharton says, in page 28 of the Testimony, "there was never any expression of dissent made to the Committee or the Board, as to the terms of the Act of Assembly, until the filing of the Answer in the cause." Were there any letters written by you to the Company on the subject?

A. Yes, there were two letters written by me, one to Mr. Lloyd Smith on the 12th May, 1870, and one to Mr. Whitman, dated 21st December, 1870, in which I expressed the opinion that I did not think it either necessary or proper to express any opinion in relation to the course pursued by the Company, to which I had been always designedly a stranger.

Q. Have you at any time, while riding in a passenger railway car from Locust to Christian Street, noticed the time it took to go from one of those points to the other?

A. I went in the cars to the corner of Thirteenth and Locust, and thence to Thirteenth and Christian, with my watch in my hand, and it took me precisely five minutes.

Q. You have said in page 11 of your Answer that you "have been met with dictation and resistance, direct and indirect, and a constant struggle to obtain the control of Dr. Rush's estate." State what dictation and resistance you have met with.

A. From the outset, there has been a constant and persistent struggle on the part of the Company to compel me to act, in reference to the site of the Library, in diametrical opposition to my own judgment, to the expressed wishes of the testator, and to the promise which I had made him. I have been asked to set aside for the uses of the Library Company by Mr. Fraley, Chairman of a Committee of stockholders and directors, the sum of $300,000, and by the Bill the sum of $200,000; and if I had complied

with the wishes of the Company, I should have been deprived of all exercise of discretion in reference, not only to the site, but as to the nature and kind of building and the amount of his estate to be expended in its erection. I made a little memorandum, which will show how entirely this would be the case if the demands of the bill should be granted by the court. It is as follows, in round numbers:—

Annuities	$200,000
Tax	50,000
Commissions, Exr., and Architect .	50,000
Lot	130,000
To be set aside, by Mr. Fraley's request	300,000
	730,000
Dr. Rush's Estate	1,067,000
Leaving	337,000

to put up a building which is estimated to cost $650,000. If I was required to buy a new lot out of the estate, it would require at least $145,000 more to be expended, beyond the $130,000 for the present one. This is what I meant by saying that the control of the estate would be taken from me and given to the Company. I may add, that, after the lapse of three years, in consequence of the opposition of the Company, I have not been able to put a spade in the ground.

Q. You have said that in your judgment, unfettered and uninfluenced by any promise, the site at Broad and Christian Streets is the best for the location of the Library building. Give the reasons upon which your judgment is based.

A. I have stated those reasons on page 10 of my Answer.

1. It is on the finest street of our city.

2. It is, so far as I know, the only lot on that street sufficiently large for the building I must erect, which I can obtain at a reasonable cost.

3. If compelled to purchase a lot elsewhere, I will not be able to erect the building ordered by the testator.

4. I know of no suitable lot on any other street which can be had at the same cost.

5. It is but little distant from the centre of the city, and is within easy reach, by car, of all portions of it.

6. It will not be necessary to have the Library building torn down in twenty years, and the lot sold because of its limited dimensions (Codicil, p. 25).

7. Its size insures, for all time, light, air, retirement, quiet, and safety from external dangers.

8. It already belongs to the estate.

9. It is exactly suited for the kind of library Dr. Rush proposed to endow—not a reading-room, nor one containing the light and ephemeral literature of the day, but one for readers and students of a higher grade.

I will add that I never have had suggested to me by any one, nor have I ever been able to see, myself, any lot which compares, in my judgment, to the Broad and Christian Street lot, up to the present moment.

Q. Mr. Wharton has said in page 41 of the testimony, "I remember being struck with Mr. Williams' expression at the time, that under the circumstances, he thought it was the best site." Was your judgment as to the site influenced by the circumstances of your promise?

A. I formed my judgment entirely independent of my promise, and I have always stated it to be founded on the particular advantages of the lot itself, independently of my promise, and meant so to express myself in all my conversations with Mr. Wharton or at the Board.

Cross-examined.

Q. Was there not a difference as to the hours of meeting of the Directors of the Library Company in the summer and the winter months?

A. I believe there was. In the summer we met at, I think, four, and in the winter at, I think, seven.

Q. You have stated that you were present at but two meetings of the Board since the death of Dr. Rush, and that the minutes of the Board show that those meetings were held on the 3d and the 10th of June. Do you not recollect that at the meeting on June 3d Judge Hare, Mr. McCall, and Mr. Wharton were appointed a Committee to examine the will of Dr. Rush, and report upon the legal and other points involved in accepting the trusts therein created, and to report on the same at an adjourned meeting of the Board, to be held on the following Thursday, the 10th instant?

A. I recollect the appointment of a Committee on the evening of the 3d, on the subject of Dr. Rush's will. I could not state from memory the members of that Committee, nor do I recollect particularly their powers, their duties, nor when they were to report.

Q. Was not the meeting of June 10th held at four o'clock P. M., and was not the reading of the report referred to in the preceding question, one of the first matters brought to the notice of the Board?

A. I suppose, upon reflection, that the meeting must have been held at four o'clock P. M., only because they were always held at that time in the summer; but I have not the slightest recollection of having heard of or seen the report referred to.

Q. You have stated that at that meeting Mr. Wharton remarked that any surplus of the estate, remaining after the erection of the building, would go to the heirs of Dr. Rush. Upon further recollection, please say whether you are positive that that remark came from Mr. Wharton.

A. To the best of my recollection I believe it did, and I was struck with the remark, because it was a perfect novelty to me.

Q. Had Dr. Rush a physician during his last illesss?

A. No, sir; he would not permit one to be called. His mind was perfectly clear, and he was convinced he could treat himself better than any other physician could.

Q. What were your reasons for supposing, as you have said on page 200 of the Testimony, that his disease was an affection of his heart, as evidenced by his great rapidity of breathing?

A. I mentioned his symptoms to a physician of my acquaintance either before or after his death, I am not sure which, though I think before, and he said it was probably an affection of the heart. He died instantaneously, as I have understood. He died about nine o'clock. I left him about eight, talking very pleasantly.

HENRY J. WILLIAMS.

Sworn and subscribed before me,
R. S. HUNTER, *Examiner.*

Nineteenth Meeting, May 17, 1872.

Present—Messrs. RAWLE, JOHNSON, and EXAMINER.

ALEXANDER BIDDLE affirmed.

Q. Do you remember attending the first two meetings of the Board of Directors of the Library Company after Dr. Rush's death?

A. I can't say that I specifically remember each of the meetings apart from each other, but I doubt whether I was absent from any. I think the minutes will show my attendance.

Q. Do you remember hearing read at either of those meetings, whilst Mr. Williams was present, a report by Mr. McCall, Mr. Wharton, and Judge Hare upon the matters growing out of Dr. Rush's will?

A. I recollect no report, prior to the stockholders' meeting, but an opinion on which Mr. George W. Biddle's name appears. I think Mr. McCall read a report at a meeting some time after the first stockholders' meeting. I don't know who signed it.

Q. State what you remember concerning a mention by Mr. Williams to the Board of Directors of oral testamentary dispositions by Dr. Rush, and any request made concerning them.

A. My impression is that Mr. Williams had informally mentioned those gifts to the Board afterwards—I should place this at the last meeting at which Mr. Williams was present—that he expressed his desire that the Board should assent to those gifts. The expression of his desire was received in silence. I recollect feeling at the time that it would be imprudent to suggest that they should be confirmed, for fear that the Board should express unwillingness.

Q. Did this silence imply, in your opinion, an assent?

(Objected to.)

A. I understood it expressed dissent.

Q. Do you remember calling with Mr. Williams at Mr. Wharton's office shortly before Dr. Rush's death?

A. I do.

Q. Did Mr. Williams then communicate to you two anything concerning Dr. Rush's testamentary intentions towards the Library Company? If so, what?

A. My recollection is that Mr. Williams wished me to go and see Mr. Wharton in reference to an inquiry which Dr. Rush had authorized him to make of us; that he so told us, and the purport of that inquiry was that Dr. Rush, having designed the erection of a building on a lot on Christian Street, wished to know if the Library Company would be likely to accept the bequest of his estate, saddled with the condition that it was to be erected under his (Dr. Rush's) instructions.

Q. What sort of building?

A. In that and in all conversations I understood that the building was to be a fireproof building, and one of an architecturally ornamental character, and an expensive one. I can't recall how strongly Mr. Williams dwelt on that, but I understood it was to be an expensive building, involving a large portion of his estate.

Q. What was Mr. Wharton's reply?

A. I know that Mr. Williams left the office under the impression (objected to) that he might report to Dr. Rush that the Library would, or ought to, accept, and I think he was so assured by myself that the Library ought to, and I think Mr. Wharton assured him that he thought they would. I think he left the office saying, "I can so report to Dr. Rush."

Q. Was anything said by Mr. Williams at that interview about books, or an endowment for books?

A. I don't recollect anything about books, but I think the estate was so spoken of as to convey the impression that a large residue would be left for Library purposes.

Cross-examined.

Q. Please look at the paper marked Exhibit 43, the report of Mr. McCall, Judge Hare, and Mr. Wharton, and say whether you have not a recollection of that report being read, or its substance stated, at the meeting on the tenth of June, 1869.

A. My recollection of this is that Mr. McCall read a paper. I recollect no active engagement in this matter by Mr. McCall until just previous to the meeting of the stockholders. I don't think that at the time we had any other opinion before us than that signed by George W. Biddle, and the tenor of my mind is to think that this was at a subsequent meeting.

Q. But you do remember that that report was read, or its substance stated, at some meeting?

A. I recollect Mr. McCall's reading a report.

A. BIDDLE.

Affirmed and subscribed before me,

RICHARD S. HUNTER, *Examiner.*

Defendants close, intending to offer certain letters in evidence.

Complainants' Rebutting Testimony.

W. E. WHITMAN recalled.

Q. Book being shown to witness, marked Exhibit 42, witness is asked, "Is this the blotter in which the original entries of the proceedings of the meetings of the Directors are entered?"

A. It is.

Q. Please turn to the entries on the 10th of June, 1869, and read them. (Vide Exhibit 42.)

What part of these entries are in your handwriting?

A. The names of the gentlemen present are in my handwriting, and the words that are erased, which are, "Mr. McCall reads Report of Committee—Adjourned till Thurs-

day," are also in my handwriting. The rest is in Mr. Smith's handwriting.

Q. At what time of the day was this meeting held?

A. It was held in the afternoon, I think. There is no note of it here; but at that season of the year we had no evening meetings, either regular or adjourned. I remember some meetings at 11 A.M. and some at 3 or 4 P.M., but our regular meetings were in the afternoon. This was an adjourned meeting I believe, as appears from the minutes, and was at 4 o'clock P.M. The heading is in Mr. Smith's handwriting.

Q. Please look at paper marked Exhibit 43, and say whether, according to the best of your recollection at this time, it is the Report to which you referred by the words "Mr. McCall reads Report of Committee."

(Objected to as leading.)

A. I think it is. I have no specific recollection of the whole Report. I cannot say that every word was read; but generally, I think it was the Report read at that time. Whether the meeting was at 12 M. or at 4 P.M. I cannot say, but it was not in the evening, I know.

Q. Was the Mr. Biddle whose name is written as present at that meeting, Col. Alexander Biddle, who has just been examined?

A. It was. He is the only Biddle who then belonged to the Board. I will say in addition, that my custom was at the next meeting always to read the minutes of the prior meeting. I have no doubt that I read the minutes of June 10 at the next meeting, on June 24, which was also an adourned meeting.

Cross-examined.

Q. And that those minutes were then approved at the next meeting?

A. Yes, sir, sub silentio.

Q. Were the minutes so read and approved those in the blotter now before me, or those copied out into the regular Minute Book?

A. Those in the blotter now before you.

Q. Do you remember the fact of the Report which you have recognized, being read at the meeting of June 10, in full?

A. I recollect that a Report was read at the meeting, and have so stated. I don't remember the particular parts of the Report, but I have no doubt it is this Report. I see there is an addition—a portion of the Report is in a handwriting different from Mr. McCall's. I cannot say that the whole was read. Whether the portion in a different handwriting was read, I cannot say. Neither can I remember definitely that portion which is in Mr. McCall's handwriting; but I remember generally that a Report was read, and that this appears to be this Report.

Q. About how long did it take to read the Report?

A. I don't remember how long.

Q. Do you know whether Mr. Williams was present at the meeting?

A. I don't remember his being present other than as the minutes show. I took down the names at the time and am sure he was there. I don't remember whether he remained there during the whole meeting.

Q. How long did that meeting last?

A. I don't remember.

Q. It was a long meeting?

A. I don't remember.

Q. Was the cancellation line on the blotter under date of June 10, 1869, drawn by yourself?

A. I am not sure. I have no recollection about it.

Q. Do you remember anything about the circumstances under which that cancellation was made?

A. Not very distinctly. This addition in Mr. Smith's handwriting brings to my recollection something about it, but nothing distinctly. I desire to add that the Report of Mr. McCall was not handed to me after it was read, and that I have not met with it from that time to this.

W. E. WHITMAN.

Sworn and subscribed before me,

RICHARD S. HUNTER, *Examiner.*

LLOYD P. SMITH recalled.

Q. Being shown the Blotter, Exhibit No. 42, witness is asked "Please read the entry of the proceedings of the meeting held June 3, 1869." (Vide Exhibit 42.)

In whose handwriting are those entries made?

A. In my handwriting, with the exception of the names of the Directors present.

Q. Please turn to the next page, viz., the entries of the meeting of June 10, and state whether you remember the Report, therein stated to have been made by Mr. McCall, to have been read, and whether according to the best of your recollection at this time, this paper, Exhibit 43, is that report.

A. My recollection of Mr. McCall's reading this Report is indistinct. I have some recollection of it. It is clearly the Report to receive which this adjourned meeting was called, and I recollect some remarks by Mr. Williams at the Board, which I think were suggested by a passage in this Report. In the Report it is stated that in a certain case the heirs of Dr. Rush might claim that the gift was void. Now I recollect Mr. Williams saying at the Board, that if the Directors chose to suggest that there was any doubt of their right to the bequest, and that there was any chance that the heirs at law might obtain the property, he himself had no objection; that he thought the heirs had been rather hardly treated—or words to that effect.

Q. Did you draw the line of erasure in the blotter, and if so, for what reason?

A. In answer to that question I may say that the Report was never put into my hands as keeper of the blotter and of the fair copy of the minutes, and that there must have been some reason why it was not thought best to go upon the copy of the minutes. That reason I do not myself recollect, but I have understood from some of the Directors what it was.

Q. At what time in the afternoon was this meeting held?

A. At 4 o'clock. All meetings between May and October were held at 4 o'clock. I do not remember the individual meeting.

Cross-examined.

Q. It was a long meeting, was it not?

A. I do not remember. I should say an hour and a half or two hours long, from what took place there. Mr. Williams spoke a good deal.

Q. Are you certain that Mr. Williams remained till the meeting broke up?

A. No, sir.

Q. Are you certain that what he said about the heirs was not suggested by something that had happened at the meeting, independently of any report?

A. I am not absolutely certain.

Q. Do you remember any discussion by Mr. Williams or in his presence at that meeting, as to his being disqualified to act in the matter of the site, by reason of a promise to Dr. Rush?

A. I do not.

Q. Do you recollect anything being said on that subject at that meeting?

A. No, sir.

Q. By whom were the instructions given to alter the first entry on the Blotter, and how soon after the meeting of June 10?

A. I don't think instructions were given by any body. I did it of my own judgment.

Re-examined.

Q. Certain entries from the Minute Book, copied from the Blotter, have been given in evidence, and in particular I refer to Exhibits Nos. 18*c* and 19*a*, on pages 112 and 113 of the Testimony, being the minutes of the meetings on the 3d

and 10th of June, 1869. Please state why they differ from the entries on the Blotter which have been to-day given in evidence.

A. The fair copy of the minutes, in a bound volume, from which Exhibits Nos. 18*c* and 19*a* are printed, was made in all cases by myself, from the Blotter, and in some few cases, in so copying, I have slightly abridged the minutes.

LLOYD P. SMITH.

Affirmed and subscribed before me,
RICHARD S. HUNTER, *Examiner*.

Twentieth Meeting, May 24, 1872.

Present—Messrs. RAWLE, JOHNSON, and EXAMINER.

PETER MCCALL recalled.

Q. Please look upon this paper marked Exhibit No. 43, and state what it is, and all your recollection connected therewith.

A. This paper is the Report of a Committee of Directors of the Philadelphia Library Company, composed of Judge Hare, Mr. Henry Wharton, and myself. This Report was read by me at an adjourned meeting of the Directors, held for the purpose of receiving it. It is partly in my handwriting and partly in the handwriting of a clerk of Mr. Wharton, and a small portion in Mr. Wharton's own handwriting. I believe the meeting was in the afternoon of the day. I have no independent recollection of the fact, but the meetings were always held at that season of the year in the afternoon.

Q. Was Mr. Williams present at that meeting?

A. I do not remember. I have no distinct recollection.

Q. Was the reading of this Report one of the earliest things done at that meeting?

A. I think so. The meeting was called for that purpose.

Q. Was this Report the result of consultations between Judge Hare, Mr. Wharton, and yourself?

A. Yes, sir. We met at Judge Hare's office, I remember, and consulted together about it.

Cross-examined.

Q. Have you any recollection that that Report was read among the first things at the meeting, independently of the fact of the meeting being called to hear it?

A. I have not.

Q. Do you ever recollect a discussion in Mr. Williams's presence, at any meeting of the Board of Directors, as to the possibility of his being disqualified from acting in the matter of the location of the Library building, by reason of a promise to Dr. Rush?

A. I do not.

Q. Were not a great number of questions growing out of the will discussed at meetings of the Board of Directors, in his presence?

A. I think not, sir; because at the first meeting at which Mr. Williams was present, the time was very much taken up with his statements of the contents of the will, and the reference to a committee naturally made unnecessary discussions of questions arising under the will. Then at the second meeting I do not remember much discussion.

Q. Do you not remember a discussion in Mr. Williams's presence in which he took part, as to the possibility of a surplus over the amount expended in the erection of a building, going to Dr. Rush's heirs?

A. I cannot say that I do.

P. McCALL.

HENRY WHARTON recalled.

Q. Please look at paper marked Exhibit 43, and state what it is and all your recollection connected therewith.

A. This paper was a Report which was the result of the consultation of Mr. McCall, Judge Hare, and myself, who

were a Committee appointed on June 3, 1869, to report June 10, 1869, on the points under Dr. Rush's will which might be considered to affect the judiciousness of the Library's accepting the bequests immediately or not. The Committee had two or three meetings, and discussed several matters, and arrived at certain general conclusions which were afterwards embodied in this Report. We had not much time to write the Report in, so Mr. McCall drafted one part and I the other. This draft was not copied for want of time, but was read at the meeting of June 10, as I see it here. Part of it is in Mr. McCall's handwriting, part in that of a young gentleman in my office at that time, to whom I believe I dictated it. The concluding paragraph is in my handwriting. I may say that the fact of the Report being drafted by different persons was not the result of any difference of opinion, but was simply to divide the labor. I had not seen the Report from the time it was read until within a few weeks, when it was produced by Mr. McCall. The Report was read at the meeting on the 10th of June.

Q. At what hour was the meeting held?

A. At four o'clock.

Q. Was Mr. Williams present?

A. Yes, he was present.

Q. Please state, as nearly as you can, what took place in connection with that Report, in which he took part.

A. I remember the Report being read by Mr. McCall. Mr. Williams, who was quite deaf, had his hand up to his ear, listening to it, and at the conclusion of the reading of it, he got up and made some remarks in a rather warm manner. It is possible that, from his defect of hearing, he did not entirely understand the Report. I think that must be so, for in a portion of his testimony, which I read the other day, he says I expressed an opinion that the savings, if any, of the estate in building the Library would go to Dr. Rush's next of kin, at which he was much surprised. I am very confident that I never expressed such an opinion, for I never entertained it. I knew, and know very well, that by

the Act of 1855, such savings could not possibly go to the next of kin. The subject of discussion in the report was really the risk that if the lot of ground had been purchased, for a purpose within that Act, under a verbal promise made within the calendar month, it might then go to the next of kin. I recollect Mr. Williams saying very properly that if we thought that, it would be best not to let the public know it, and for that reason the Report was not entered upon the minutes.

Q. Please state how long the meeting lasted, and your reasons for any particular recollection on the subject.

A. My general recollection is that it was a comparatively short meeting. There was nothing done but the reading of the report, some observations by Mr. Williams, and some little discussion among the Directors. I have also a particular reason—I was then living at Chestnut Hill, and the trains in the afternoon left at quarter of six and at seven. I am confident I dined at Chestnut Hill on that day. I must, therefore, have gone out in the quarter of six train. For that purpose I would have left the Library, at the latest, at 5.20.

Q. Did Mr. Williams remain till the close of the meeting?

A. I can't say.

Q. Did you leave before the meeting adjourned?

A. No, I stayed till adjournment.

Q. Was the reading of the report one of the first things done at the meeting?

A. It was the first thing after getting a quorum.

Cross-examined.

Q. Was the committee of three continued after the meeting of June 10?

A. Yes.

Q. Did it ever report afterwards?

A. Yes. In the mean time we had seen Mr. Meredith, Mr. Geo. Biddle, and Mr. McMurtrie, with whom the subjects contained in that report were discussed, who concluded that it was not advisable to do more at the time than to express

their opinion as to the necessity and judiciousness of the Library accepting at that time. This was put in writing by them, and at the next meeting after June 10, it was reported by the committee with some verbal observations.

Q. What became of the report (Exhibit 43)?

A. Mr. McCall took it. It was not left among the papers of the Library Company.

Q. Do you know at whose request the erasure of the minutes was made?

A. I never knew they had been altered, until, finding there was a discrepancy between the printed minutes and my own recollection, I turned to the rough minutes and found they were altered in the way in which they now appear.

Q. Did you not, prior to Mr. Williams's testimony, read over the printed report of complainant's testimony?

A. No, I did not. I read my own, and perhaps Mr. Smith's, but not the exhibits.

Q. Was there no discussion at the directors' meeting on June 10, of various points arising under Dr. Rush's will?

A. There was, of some points.

Q. Did Mr. Williams take part in these?

A. I don't think he did much.

Q. Was the question of his disqualification, by reason of his promise, one of the points so discussed?

A. I don't think it was in his presence. My impression is that it was a delicate subject. After the report was read there may have been one or two observations about it, but I don't think it was discussed with him, at least as a subject affecting himself. I think the only reference to it was in his comment on that portion of the report which referred to the possibility of the lot going to the next of kin. It is very probable that he went away before the close of the meeting and that when he went it was more freely spoken of.

Q. Mr. McCall, when he read the report, read it in his ordinary tone of voice, did he not?

A. Yes.

Q. And that tone is high or low?

A. It is not a very loud tone of voice.

Q. Have you any recollection, as a fact, of the portion of the report referring to Mr. Williams's disqualification, being read in his presence?

A. I have no recollection of any special part of the report being read. I am confident that the whole report was read, as a fact, to the best of my knowledge and belief. If he had omitted to read any portion, especially that referred to, I should have noticed it at the time. That portion is in Mr. Vogel's handwriting, the gentleman to whom I dictated it.

Q. It is on a sheet between two parts in Mr. McCall's handwriting, is it not?

A. Yes. I may add, I have a distinct recollection of these two sheets being part of the report at or before the time it was read. They are connected with what had preceded by three words in Mr. McCall's handwriting.

(Mr. Johnson says that his question was not in the least founded upon any supposition that these sheets were not *part of* the original report.)

HENRY WHARTON.

Affirmed and subscribed before me,
RICHARD S. HUNTER, *Examiner*.

EXHIBITS.

EXHIBIT No. 1.

Mr. Williams to Mr. McCall.

DEAR SIR :—

I informed Mr. Judson yesterday morning that I should retain Judge Strong as my counsel in Dr. Rush's estate, and as it appeared after the meeting of the Board in the afternoon, that it was not impossible that some legal proceedings would be instituted, I called on him last evening to ask him to act as my counsel, to which he assented.

I apprise you of this because his name was mentioned as one whose opinion might be asked by the Committee, and I thought you ought to be aware of this fact.

Very respectfully, &c.,

H. J. WILLIAMS.

P. McCALL, Esq.
June 11, 1869.

EXHIBIT No. 2.

Mr. Fraley to Mr. Williams.

OFFICE OF THE SCHUYLKILL NAVIGATION COMPANY,
No. 417 WALNUT STREET, PHILADELPHIA,
July 7, 1869.

MY DEAR SIR :—

At a meeting of the Committee of Stockholders and Directors of the Philadelphia Library Company, held yesterday, Judge King, Mr. W. P. Tatham, and myself, were appointed a sub-committee for the purpose of conferring with you on the following points connected with the will of the late Dr. James Rush :—

First. The present value of the estate, real and personal, and the annual income thereof.

Second. The site and plan of the building proposed to be erected for Library purposes, and the estimated cost thereof.

Third. The probable amount of the annual income of the residue of the estate.

Will you have the kindness to designate some time and place for a personal interview with the Committee for such a conference, as it is hoped that it will lead to a satisfactory settlement of the questions referred to the Committee?

With great regard, I am Truly yours,

FRED. FRALEY,
Chairman.

HENRY J. WILLIAMS, Esq.,
Chestnut Hill.

EXHIBIT No. 3.

Resignation of Mr. Williams.

GENTLEMEN:—

I beg leave to offer my resignation as a Director of the Library Company of Philadelphia.

The experience of the last six months has convinced me that it is neither desirable nor expedient that the Executor of Dr. James Rush should continue a member of the Board. With great respect and regard, I remain,

Your obedient servant,
HENRY J. WILLIAMS.

To the Directors of the Philadelphia
Library Company.
CHESTNUT HILL, Dec. 28, 1869.

EXHIBIT No. 4.

Letter of Counsel.

DEAR SIR:—

Mr. Williams has handed us, as counsel for the estate of Dr. Rush, the resolution of the Board of Directors of the

Library Company of Philadelphia, accompanied by a proposed Act of Assembly.

While the latter, in its present shape, cannot be considered as committing the Executor, we see no objection to its presentation to, and passage by, the Legislature.

Truly yours,

W. STRONG,
W. F. JUDSON.
(Counsel for H. J. Williams.)

R. C. McMURTRIE, Esq.

EXHIBIT No. 5.

Mr. Williams to Mr. McMurtrie.

DEAR SIR:—

You have been misinformed as to my having expressed any desire to *see* the opinion of the counsel of the Library Company. The question was asked me, *whether I had received it*, and my answer was simply in the negative.

Mr. J. G. Johnson is my counsel.

Yours respectfully,

HENRY J. WILLIAMS.

R. C. McMURTRIE, Esq.

Feb. 27, 1871.

EXHIBIT No. 6.

Mr. Williams to Judge Strong.

MY DEAR SIR:—

I am sorry to trouble you about my matters while you have so many important public duties to perform, but in our Library case there is a matter of date, which has assumed some importance. I attended two meetings of the Library Company Directors after Dr. Rush's death, one on the third, and one on the *tenth* of June, 1869. I retained you as my counsel on the eleventh.

I submitted to you on the next day, or the day after, a series of questions, on which you gave an opinion dated the 15th June.

Now, Mr. Wharton has said, in his testimony, that a report from Judge Hare, Mr. McCall, and himself, expressing the opinion that I had disqualified myself from selecting a site for the Library building, by my promise to Dr. Rush to place it at Broad and Christian Streets, was read in my presence on the 10th of June. The report is a very long one, and I am very confident I never saw or heard of it at that time, nor ever after. If I had, I surely would have mentioned it in my questions, as it was of more consequence than any other point in the case.

Now, if your memory serves you, will you say whether you heard of this presumed disability at that time from me, and how soon after; and whether you had any conversation with Mr. McMurtrie on that point, and if so, at what time that conversation occurred? An early answer will much oblige

Yours very respectfully,
HENRY J. WILLIAMS.

Hon. Judge Strong,
Washington, D. C.
April 20, A.D. 1872.

Exhibit No. 7.

Washington, April 22, 1872.

Hon. Henry J. Williams:—

My Dear Sir: I have received yours of Saturday last, I presume, though undated, and I have been taxing my memory to enable me to respond to your inquiries.

I cannot recall the date of my retainer by you as counsel in the settlement of Dr. Rush's estate; I do remember, however, giving you an opinion in answer to written queries submitted by you within a few days after my retainer. I am very certain that when I gave that opinion,

I had not heard of any suggestion that you were disqualified for acting as executor or trustee under Dr. Rush's will, in consequence of any promise you had made to him, or for any other reason. Certainly you mentioned no such thing to me, nor did Mr. Judson. I think I heard of no such suggestion until some weeks afterward, and then I did not understand it to be seriously made.

I cannot fix the time when you first spoke to me upon the subject, but I think it must have been full two months after I gave my opinion.

Nor can I recollect that I had any conversation with Mr. McMurtrie *on that subject;* if anything passed between us relative to it, it must have been but a slight allusion, which made no impression upon my memory. Certainly I never understood Mr. McMurtrie to claim, in my presence, that you were under any such disqualification.

With sincere regard, I am

Yours very truly,

W. STRONG.

James S. Biddle

Library Company

vs.

WILLIAMS.

MASTER'S REPORT.

In the Supreme Court of Pennsylvania in and for the Eastern District.

THE LIBRARY COMPANY OF PHILADELPHIA,

vs.

HENRY J. WILLIAMS.

No. 1. July Term, 1871.
In Equity.

And now, June 22d, 1872, on motion of Messrs. Rawle and McMurtrie, for Complainants, the Court appoint P. Pemberton Morris, Esquire, as Master in the above case, to report the law, the facts, and a decree proper to be made therein.

Per Cur.

[From the Record.]

In testimony whereof I have hereunto set my hand, and affixed the seal of said Court, at Philadelphia, this twenty-fourth day of June, A. D. 1872.

JAMES ROSS SNOWDEN, [L. S.]
Prothonotary.

The Master, who is directed by his certificate of appointment "to report the facts, the law, and a decree proper to be made," makes the following report: He was attended on the day appointed, June 25, 1872, by Wm. H. Rawle, Esq., and R. C. McMurtrie, Esq., for Plaintiffs, and by J. G. Johnson, Esq., and George Junkin, Esq., for Defendant. The questions involved were elaborately discussed on that day, and at adjourned meetings on June 28, July 1, 2, 3, and 5, on the pleadings, Examiner's Report and Exhibits. The facts following are either proved or admitted.

The Philadelphia Library Company was chartered on the 25th day of March, 1742, in the words following:

CHARTER OF THE LIBRARY COMPANY.

John Penn, Thomas Penn, and Richard Penn, Esquires, true and absolute proprietaries of the province of Pennsylvania, and counties of Newcastle, Kent, and Sussex, upon Delaware: To all to whom these presents shall come, greeting:

WHEREAS, Benjamin Franklin, Robert Grace, Anthony Nicholas, Thomas Cadwalader, William Coleman, Thomas Godfrey, Henry Pratt, Benjamin Paschall, Joseph Breintnall, John Jones, Jr., Samuel Hale, William Parsons, Nicholas Cassel, Francis Richardson, William Maugridge, David Bush, Thomas Hopkinson, Philip Syng, Jacob Duché, Evan Morgan, Joseph Stretch, John Paschall, Nicholas Scull, Thomas Green, Hugh Roberts, Rees Lloyd, John Roberts, Richard Standley, John Nicholas, John Sober, Charles Read, Daniel Harrison, James Morris, Thomas Shaw, John Read, Joshua Richey, James Hamilton, William Plumsted, John Bard, Samuel Morris, John Stamper, Samuel Norris, John Mifflin, John Langdale, Samuel Coates, Samuel Rhoads, Joseph King, Alexander Graydon, James Merrywether, Anthony Morris, Jr., Tobias Griscom, Charles Willing, Isaac Williams, William Allen, Joseph Peters, Richard Peters, Thomas Clay, Phineas Bond, Israel Pemberton, Jr., Robert Greenway, William Crosthwaite, William Callender, George Emlen, Jr., Isaiah Warner, Tench Francis, James Bingham, Charles Meredith, Samuel McCall, Hugh Davis, Amos Strettell, Benjamin Shoemaker, Joseph Hatton, Andrew Hamilton, Thomas Bond, and William Peters, have, at a great expense, purchased a large and valuable collection of useful books, in order to erect a library for the advancement of knowledge and literature in the City of Philadelphia; Now know ye, that we being truly sensible of the advantage that may accrue to the people of this Province by so useful an undertaking, and being willing to encourage the same, have given

and granted, and by these presents, do, for us and our successors, give and grant, that the said Benjamin Franklin, Robert Grace, Anthony Nicholas, Thomas Cadwalader, William Coleman, Thomas Godfrey, Henry Pratt, Benjamin Paschall, Joseph Breintnall, John Jones, Jr., Samuel Hale, William Parsons, Nicholas Cassel, Francis Richardson, William Maugridge, David Bush, Thomas Hopkinson, Philip Syng, Jacob Duché, Evan Morgan, Joseph Stretch, John Paschall, Nicholas Scull, Thomas Green, Hugh Roberts, Rees Lloyd, John Roberts, Richard Standley, John Nicholas, John Sober, Charles Read, Daniel Harrison, James Morris, Thomas Shaw, John Read, Joshua Richey, James Hamilton, William Plumsted, John Bard, Samuel Morris, John Stamper, Samuel Norris, John Mifflin, John Langdale, Samuel Coates, Samuel Rhoads, Joseph King, Alexander Graydon, James Merrywether, Anthony Morris, Jr., Tobias Griscom, Charles Willing, Isaac Williams, William Allen, Joseph Peters, Richard Peters, Thomas Clay, Phineas Bond, Israel Pemberton, Jr., Robert Greenway, William Crosthwaite, William Callender, George Emlen, Jr., Isaiah Warner, Tench Francis, James Bingham, Charles Meredith, Samuel McCall, Hugh Davis, Amos Strettell, Benjamin Shoemaker, Joseph Hatton, Andrew Hamilton, Thomas Bond, and William Peters, and such other persons as shall hereafter be admitted or become members of *The Library Company of Philadelphia*, according to the laws and constitutions of the said Company, hereafter to be made, be and forever hereafter shall be by virtue of these presents, one body corporate and politic in deed, by the name of The Library Company of Philadelphia, and them by the name of The Library Company of Philadelphia, one body politic and corporate in deed and in name, we do for us, our heirs and successors, fully create, constitute, and confirm by these presents; and that by the name of *The Library Company of Philadelphia* they shall have perpetual succession; and that they, by the name of *The Library Company of Philadelphia*, be, and at all times hereafter shall be, persons able and capable in law to

have, hold, receive, and enjoy lands, tenements, rents, liberties, franchises, and hereditaments, in fee simple or for term of life, lives, years, or otherwise; and also goods, chattels, and other things of what nature, kind or quality soever. And also to give, grant, let, sell, or assign the same lands, tenements, hereditaments, goods, and chattels; and to do and execute all other things about the same, by the name aforesaid; and also, that they and their successors, by the name of *The Library Company of Philadelphia*, be and shall be forever hereafter persons able and capable in law to sue and be sued, implead and be impleaded, answer and be answered unto, defend and be defended, in all and any of the courts or other places, and before any judges, justices, and other persons whatsoever, in all manner of actions, suits, complaints, pleas, causes, and matters whatsoever, and of what nature and kind soever. And that it shall and may be lawful to and for the said *Library Company of Philadelphia*, and their successors forever hereafter, to have one common seal for their use in their affairs; and the same at their will to change and alter. And for the well-ordering and governing the affairs of the said Company we do, for us, our heirs, and successors, further grant, That it shall and may be lawful for the said Company and their successors to assemble and meet together on the first Monday in May, in every year, and at such other times as there shall be occasion, at their Library, or some other convenient place, due and public notice being given at least twenty days before the times of such meetings; not only of the day, hour and place of such meeting, but of the cause thereof, and of the matters to be transacted at such meeting. And that they, the said Company, or one-fourth part of them at least, being so met in person, or by proxy duly constituted in writing, shall have full power and authority, from time to time, to make, constitute, and establish such laws, statutes, orders, and constitutions as shall appear to them, or the major part of them, to be good and useful, honest and necessary, according to the best of their judgment and discretion, for the government, regulation, and direction of the Library

Company and every member thereof; and for the appointing and regulating the election or nomination of Directors, Treasurer, Librarian, Secretary, and such and so many other officers as they shall think fit; and for limiting and appointing their trust and authority; and for the admitting new members; and to do all things concerning the government, estate, goods, lands, revenues, as also all the business and affairs of the said Company. All which laws, statutes, orders, and constitutions, so to be made as aforesaid, shall be binding on every member, and be, from time to time, inviolably observed, according to the tenor and effect of them, provided that they be not repugnant or contrary to the laws of England or this government. *Provided always*, That for the increase and preservation of the said Library every member of the said Company shall and do pay into the hands of the said Company's Treasurer, for the time being, the sum of ten shillings, on the first Monday in May, in every year forever; and those who neglect so to do shall pay such greater sum or sums in lieu thereof, at such times, within twelve months then next following, as by the laws of the said Company shall be appointed. And that in default of these payments every delinquent shall forfeit his share in the books and estate of the said Company, and be no longer a member. In testimony whereof, we have caused the Great Seal of our said Province to be hereunto affixed. WITNESS, GEORGE THOMAS, Esq., Lieutenant-Governor and Commander-in-Chief of the said Province and Counties, at Philadelphia, the 25th day of March, in the fifteenth year of the reign of our sovereign lord, King George the Second, and in the year of our Lord one thousand seven hundred and forty-two, by virtue of certain powers and authorities to him for this purpose (*inter alia*) granted by the said proprietaries.

GEORGE THOMAS.

The following rules to be observed by *The Library Company of Philadelphia* were adopted at an early date, and have been in force, without variation, to the present time, and are now in force:

Rules to be Observed by the Library Company of Philadelphia.

I. The Librarian shall attend at the Library every day (Sundays excepted), from the first day of April until the first day of October, from two o'clock P. M. until sunset, and from the first day of October until the first day of April, from one o'clock P. M. until sunset. He shall enter in the catalogue kept at the Library such books as may be purchased or added to the Library, label and number the same, as well as all others from which the label or number may be torn off or defaced. He shall also replace the books on the shelves, as they are brought in, as soon as he conveniently can, first having examined whether they are free from damage.

II. He shall lend to any member,

One Folio for five One Quarto for three One Octavo, or Two Duodecimos for two	Weeks,

and no greater number, unless on hire, or so connected as to be otherwise useless. Such persons, however, who reside at the distance of seven miles or upward, are permitted to have books one week longer than the above-mentioned times. For all books so lent he shall take a note, payable to the Company, for double the value as nigh as he can estimate, of the book or set of books to which they belong, conditioned to return the same, undefaced, within the time above mentioned; at the expiration of which (unless application has been made by another member for the same books, and the Librarian requested to take a memorandum thereof), the borrower may,

on producing the book to the Librarian, renew his note for the like time.

III. Every person, not being a member, who shall hire a book, &c., shall first give a note for double the value thereof, in the same manner, and be subject to the same regulations, as a member; and shall also deposit, as security, in the hands of the Librarian, double the value of such book or books; but if the book or books should belong to a set, then such person shall deposit treble the value of the volume or volumes which he shall so take out.

IV. Every member, or other person, who shall take out a book or books on hire, shall pay, for the use of the Library, the following rates, weekly: For Duodecimos and Octavos, two-sixteenths of a dollar; Quartos, three-sixteenths of a dollar; and Folios, four-sixteenths of a dollar; and no smaller sum, although the book may be returned within the week.

V. Every member, or other person, who shall neglect to return the book or books within the time specified in the second rule, shall, for such neglect, pay to the Librarian, for the use of the Library (besides the hire, where the book is not taken out by virtue of a share), two sixteenths of a dollar per week; and if not returned, undefaced, within one month from the expiration of the time limited in the note, the fines and hire accruing thereupon shall be doubled; and if not so returned within three months from the same period, the note or deposit money shall be forfeited to the company.

VI. Books returned are to be delivered into the hands of the Librarian to be examined, whether damaged or not.

VII. No person from whom any hire or forfeiture is due, or who hath damaged any book, shall be permitted to have another book till satisfaction be made.

VIII. If a member, and one who is not a member, should apply for the same book at the same time, the member shall have the preference.

IX. A member may take out on hire, without deposit, as many books in value for which his share in the Library shall, by the Librarian, be deemed a sufficient security, on the same terms, in other respects, as persons who are not members.

X. The Librarian shall furnish the Directors, at each monthly meeting, with an account of the fines and forfeitures which have accrued during the preceding month.

XI. The Librarian is to conform to the instructions of the Directors with regard to such books as, from their scarcity and value, are to be let out only on certain conditions, or not at all.

XII. No person, whether a member or not, is to lend the book or books he borrows to any person out of his dwelling-house.

XIII. No book shall be lent on the share of a deceased member, unless the note be signed by all the executors or administrators of such deceased member, or by some one of them, appointed and authorized by written orders of the others.

[Exhibit C. p. 32 of answer.]

On the 23d February, 1870, an Act of Assembly was passed in the words following. (Examiner's Rep., p .145.)

AN ACT

Relative to the Ridgway Branch of the Philadelphia Library.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That the Library Company of Philadelphia be, and they are hereby authorized, to act as trustees for the Ridgway Branch of the Philadelphia Library and the trusts pertaining thereto under the last will and codicils of James Rush, late of

the city of Philadelphia, Doctor of Medicine, upon the conditions and provisions therein contained, without limitation as to the yearly value or income of the said trust estate, but in such manner that the real and personal property of the Company, including such books, pictures, statues, and other works of literature and art as now are or shall hereafter be held by them, in their own right or on any other of different trusts, shall be in no wise affected thereby, but shall remain and be under their own entire and exclusive control and disposition; and the said Company are hereby empowered after acceptance of this Act by the members of the said Company to apply from time to time to the Court of Common Pleas for the City and County of Philadelphia, for such further amendments to the charter of the Company as may be necessary to carry into effect the conditions and provisions of the said will and codicils in accordance with the directions of this Act.

B. B. STRANG,
Speaker of the House of Representatives.
CHARLES H. STINSON,
Speaker of the Senate.

Approved the twenty-third day of February, Anno Domini one thousand eight hundred and seventy.

JNO. W. GEARY.

At a meeting of the Corporators of the Library Company, held May 25, 1870, the provisions of this Act were accepted, and the Directors were requested to apply to the Court of Common Pleas of Philadelphia County for certain amendments to the charter of the Company. (Examiner's Rep., p. 147.)

The application was made, and on the 10th December, 1870, the Court of Common Pleas of Philadelphia ordered and decreed that the alterations, improvements and amendments in the words following should be deemed taken to be part of the instrument upon which said Corporation was framed and established, to-wit:

To the Honorable the Court of Common Pleas for the City and County of Philadelphia:—

The memorial of the Library Company of Philadelphia respectfully represents to your Honorable Court, that by an Act of Assembly, entitled, "An Act relative to the Ridgway Branch of the Philadelphia Library," approved the twenty-third day of February. A. D. 1870, it was enacted, "That the Library Company of Philadelphia be, and they are hereby authorized, to act as Trustees for the Ridgway Branch of the Philadelphia Library and the trusts pertaining thereto, under the last will and codicils of James Rush, late of the City of Philadelphia, Doctor of Medicine, upon the conditions and provisions therein contained, without limitation as to the yearly value or income of the said trust estate, but in such manner that the real and personal property of the Company, including such books, pictures, statues, and other works of literature and art as now are, or shall hereafter be, held by them in their own right, or on any other or different trusts shall be in no wise affected thereby, but shall remain and be under their entire and exclusive control and disposition; and the said Company are hereby empowered, after acceptance of this Act by the members of the said Company, to apply from time to time to the Court of Common Pleas for the City and County of Philadelphia, for such further amendments to the charter of the Company as may be necessary to carry into effect the conditions and provisions of the said will and codicils in accordance with the directions of this Act."

That at a meeting of the members of the said Company, duly convened on the twenty-fifth day of May, A. D. 1870, it was resolved, "That the Library Company of Philadelphia do accept the provisions of the Act of the General Assembly of the Commonwealth, approved the twenty-third day of February, 1870,

entitled 'An Act relative to the Ridgway Branch of the Philadelphia Library.'"

"*Resolved*, That the Directors be requested to apply to the Court of Common Pleas of Philadelphia County for the following amendments to the charter of the Company," to-wit:

(Prout the same, *supra* p. 147.)

Your petitioners therefore pray that the said amendments may be allowed to be made to the charter of the said Company and form a part thereof, according to the Act of Assembly in such case made and provided.

W. E. WHITMAN, [SEAL.]
Secretary.

City and County of Philadelphia, ss.

Be it remembered, That at a Court of Common Pleas, held at Philadelphia, on the thirty-first day of October, A. D. 1870, the above and foregoing amendments to the charter of "The Library Company of Philadelphia" were presented to the said court for its approval. Whereupon the court ordered the same to be filed in the Prothonotary's Office of said court, and that public notice be given of the application agreeably to the provisions of the Act of Assembly in such case made and provided. And now, to-wit: December 10, A. D. 1870, due proof having been exhibited of the publication of notice of said application agreeably to the order of the court, and that no cause to the contrary being shown, and it appearing to the court that the said amendments and alterations are and will be lawful and beneficial, on motion of R. C. McMurtrie, Esquire, it is ordered and decreed that the said alterations, improvements, and amendments shall be deemed and taken to be a part of the instrument upon which said corporation was formed and established to all intents and purposes as if the same had been originally made part thereof:

And it is further ordered, that the said amendments be recorded in the office for recording of deeds in and for said county.

[SEAL.] Witness my hand and the seal of the said court this sixth day of March, A. D. 1871.

R. DONAGAN,
Prothonotary.

City of Philadelphia, ss.

I, John A. Houseman, Recorder of Deeds, &c., for the said city, do hereby certify that the within and foregoing is a true and correct copy of an instrument of writing found of record in my office, in Miscellaneous Book J. A. H., No. 1, page 145.

[SEAL.] Witness my hand and seal of office, this 30th day of March, A. D. 1871.

J. A. HOUSEMAN,
Recorder.

Per M. MYERS.

On the 25th of March, 1760, the executors of James Logan granted to Israel Pemberton, William Allen, Richard Peters and Benjamin Franklin, certain real estate and other property, to be held in trust for the support of a Library established by the said James Logan at Sixth and Walnut Streets, Philadelphia, under circumstances recited at great length in the conveyance. The trustees having died, and no others having been appointed, the legislature, on the 31st March, 1792, at the instance of Mr. Logan's heirs, passed an Act of Assembly in these words (omitting the preamble, which is long, and has no bearing on the case in hand).

WHEREAS, &c., &c.

SECTION I. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General*

Assembly met, and it is hereby enacted by the authority of the same, That all and singular the aforesaid messuage and lot of ground, two rents charge, with all and every the arrearages thereof, and the books and other property in the said messuage contained, shall be, and they are hereby, vested in the Library Company of Philadelphia, their successors and assigns forever, in trust for the support and increase of the said Loganian Library.

SECT. II. *And be it further enacted by the authority aforesaid,* That the directors of the said Library Company of Philadelphia, for the time being, together with James Logan, and such two other trustees as he shall appoint, a majority of the whole of whom shall be a quorum, shall be trustees of the said Loganian Library, and may and shall, from time to time, make such by-laws, rules, and regulations, for the preservation and management thereof, as consistently as may be with the meaning and instructions of the said donors, as occasion shall require; *Provided always,* That the said books and other property now in the said messuage, and such additions thereto as may be made, shall always be kept separate and apart from the books belonging to the Library Company of Philadelphia, and to be called by the name of the Loganian Library, agreeably to the intention of the donor, and for continuing a succession of trustees, composed of the descendants of the said James Logan the elder, or of persons appointed by such descendants.

SECT. III. *And be it further enacted by the authority aforesaid,* That upon the demise of the said James Logan, son of James Logan, the elder, the next heir male of the said James Logan, the elder, if resident in the City of Philadelphia, or within seven miles thereof, preferring the issue of the eldest son to the issue of the second or other son, and the male line to the female line, and in case of the extinction of the male line, then the eldest heir male in the female line shall always be one of the trustees of the said institution, and shall have power to supply vacancies, in case of the death or resignation of any of the said associate trustees; and in case such male heir shall

not be resident in the said City of Philadelphia, or within seven miles thereof, or shall be in his minority, the survivor or survivors of such associate trustees shall supply such vacancy, as it shall happen.

SECT. IV. *And be it further enacted by the authority aforesaid,* That the said Trustees shall have power to dispose of at public sale, the said messuage and lot of ground in Sixth Street aforesaid, the proceeds whereof shall be applied to the general purposes intended by the donors, and to demand, and by all lawful means levy, recover, and receive all and every the arrears of the said rent's charge, whether the same accrued before the passing of this Act or shall hereafter accrue, by distress or action, in the corporate name of the Library Company of Philadelphia.

Approved, March the thirty-first, 1792.

Other trusts have also been confided to the Library Company. (Bill, page 2; Ans. Sect. 2, page 13).

The collection of books belonging to or held in trust by the Library Company of Philadelphia is very valuable, and is in a building not fire-proof, situate at the north-east corner of Fifth and Library streets.

The Directors of the Philadelphia Library Company, its stock or share-holders and persons interested in its objects, among others the late Dr. James Rush, had been for years striving to raise funds for the erection of a permanent fire-proof building to contain the books belonging to the Company or held in trust by it.

Dr. James Rush died May 26th, 1869. His will and three codicils were proved May 31st, 1869, and on the same date letters testamentary were granted to Henry J. Williams, Esq., the executor named in the will, and the defendant in this suit.

The will bears date February 26th, 1860.
First codicil bears date May 16th, 1866.
Second codicil bears date April 18th, 1867.
Third codicil bears date April 12th, 1869.

The will and first and second codicils alone have provisions which enter into this controversy.

They are as follow:

WILL OF JAMES RUSH, M. D.

Be it remembered, That I, JAMES RUSH, of the city of Philadelphia, M. D., do make this my last will and testament, hereby revoking all others by me heretofore made, in manner following—that is to say:—

I will and direct that all my just debts, which will be found very few in number and insignificant in amount, shall be paid by my executor as soon as possible.

It is my intention, by a codicil or codicils to this my will, to give considerable legacies, annuities, and devises to different persons, but as I desire to take some time for reflection on this subject, and as I have made up my mind as to the disposition of my residuary estate after the payment of these legacies, annuities and devises; now, therefore, I do hereby give, bequeath, and devise my whole estate, real and personal, legal and equitable, whatsoever and wheresoever the same may be, unto my brother-in-law, HENRY J. WILLIAMS, of the city of Philadelphia, his heirs and assigns, to be held by him for and upon the

following trusts and purposes, and for and upon no other use, trust, or purpose whatsoever—that is to say:—

In trust, after paying, providing for, and complying with all legacies, annuities, gifts, bequests, and devises, declarations, and intentions which may be contained and expressed in any codicil or codicils to this, my last will and testament, which I may hereafter make (to be signed by me at the end thereof), whether the same be formally drawn or not; to have and to hold the whole residue and remainder of my estate, real and personal, whatsoever and wheresoever the same may be, for the following uses and purposes, viz:—

In trust, to select and purchase a lot of ground not less than one hundred and fifty feet square, situate between Fourth and Fifteenth and Spruce and Race Streets, in the city of Philadelphia, and thereon to erect a fire-proof building sufficiently large to accommodate and contain all the books of the Library Company of Philadelphia (whose library is now at the corner of Fifth ahd Library Street), and to provide for its future extension according to plans, directions, and specifications which I shall hereafter make or give; but if I should not make or leave any such plans, directions or specifications, then to erect the same according to his best judgment and to the views which I have expressed to him. It is my wish that this building should be exceedingly substantial, completely fire-proof, without any large, lofty or merely ornamental halls or lecture-rooms; the whole interior to be divided in such a way as to contain the greatest number of books, to be well lighted, and so arranged as to be of easy and convenient access.

And upon this further trust, so soon as this building is completed and ready for occupation, then in trust to convey the same, with the lot of ground whereon it is erected, unto "The Library Company of Philadelphia" aforesaid, and their successors, for the uses and purposes of their library, and for no other use or purpose whatever.

Provided, however, that before any such conveyance shall be

made to the said Library Company they shall, either by an alteration in their charter, or in some other way satisfactory to my executor, bind themselves and their successors to conform to and comply with the following express conditions, and any others I may hereafter impose, under which they are to hold the said property and all other bequests and devises herein or hereafter given to them :—

First. That the said Library Company shall not cause, allow, or permit any lectures, public orations, or oral addresses or exhibitions of any kind to be delivered, given, or to take place on the said lot of ground, or in the said building; nor shall they cause, allow, or permit the formation of any museum, cabinet, gallery, or collection of natural history, statuary, sculpture, portraits, or paintings thereon or therein; nor shall they use, apply, or expend any funds, derived from me, or under my will or any codicil thereto, in procuring or defraying the expenses of any such lectures or exhibitions, public orations, or oral addresses, or in the establishment or support of or for additions to any such museum, cabinet, gallery, or collection, painting, or portraits (and especially that of the testator) on the said lot and in the said building or elsewhere.

These are objects foreign to and inconsistent with the legitimate purposes of a public library, and it is only for the preservation, extension, and free and convenient use of such a library, without any ambitious or pretentious display, that it is desired to make provision.

Second. That all the accounts of the receipts and expenditures from the estates aforesaid, real and personal, shall be kept separate and distinct from all other accounts of the said Library Company, and shall all be headed and kept as the accounts of "THE RIDGWAY BRANCH OF THE LIBRARY COMPANY OF PHILADELPHIA," so that it may be always easily and certainly ascertained whether the application of those estates and the the income derived therefrom has been in accordance with the provisions of this my will.

And I further will, direct, bequeath, and devise that whenever the said building shall have been completed and transferred to the said Library Company, and the preliminary conditions complied with, then my said executor shall assign, transfer, and convey, by one or more deeds and instruments, all the rest and remainder of my residuary estate not laid out and expended in the purchase of the lot and the construction of the building aforesaid, and in the legal and customary charges and expenses, unto the said Library Company, to be held and used by them and their successors for the following uses, trusts, and purposes :—

First. In trust to keep the whole of the real estate granted and conveyed to them by my executor, in good order and repair, and to make, from time to time, such additions to the library building as may be found necessary for the extension and preservation and convenient use of the said library, *and all additions thereto.*

Second. In trust, after paying all necessary taxes, charges and expenses incident to the said property, to set aside annually ten per cent. of the clear net income, to form a contingent fund, to be invested, and the interest added to the principal, which fund, or so much thereof as may be required, shall be applied :—

First. To build upon, improve, alter, and renew any lands and tenements hereby devised to the said Company, so as to increase the income derived therefrom.

Second. To make good and replace any losses from the failure of any investments made of or from the property hereby bequeathed for the said Company; and,

Third. Whenever the said contingent fund shall amount to $30,000, then to pay over and apply the whole surplus beyond the said $30,000 for the general purposes to which the income of this residuary estate is herein directed to be applied.

Third. In trust to pay all necessary salaries of the librarian

and his assistants, and the expenses of binding and preserving the books of the whole library, making cheap catalogues, and all charges incident to its care and management. The said library is to be kept open from nine o'clock A. M. until at or near sunset, except on Sundays and holidays.

Fourth. And in trust, after complying with and fulfilling the previous trusts and purposes hereinbefore contained and expressed, to apply the remainder or surplus of the said net annual income, or so much thereof as may be necessary or desirable, to the increase and extension of *the said library.*

But I direct that no portion of my real estate aforesaid shall be sold by the Library Company for ten years after my death, nor then, unless it be absolutely necessary for the purposes of this trust, even if additional income should be derived therefrom; and in no case, unless the said sales are sanctioned by a decree of the Orphans' Court or a Court of equity, which shall decide such sales are not in contravention of the spirit of this my will.

And in order to enable my executor to carry out the directions of this my will, I hereby authorize and empower him to grant, bargain, and sell any part or parts of my real estate, at public or private sale, for any price or consideration, with any restrictions, reservations, covenants, or conditions, for cash or on credit, taking security on the premises for the balance of the purchase moneys; or to let on ground rent, mortgage, exchange, or make partition of the same, or any part or parts thereof; and to seal, execute, and deliver all deeds, conveyances, mortgages, assurances or other instruments, necessary for the purposes aforesaid, without any obligation on the purchaser or purchasers to see to or be responsible for the application of the purchase money or other consideration, or for the propriety of the exercise of this power.

And I further will, devise, and direct that all investments, if any should be made by my executor, and all those which may at any time hereafter be made by the said Library Com-

pany from the principal or income of my said estate shall be in ground rents or other real estate in the State of Pennsylvania, or in bonds and mortgages upon property within the said State, or in loans of the said State, or of the United States; and lastly, I hereby appoint my brother-in-law, Henry J. Williams, of the City of Philadelphia, executor of this my last will and testament.

In witness whereof, I have hereunto set my hand and seal this twenty-sixth day of February, A. D. eighteen hundred and sixty (1860).

(Signed), JAMES RUSH.

Witnesses—WM. F. JUDSON,
J. S. FARMER,
R. S. HUNTER,
J. S. FARMER.

October 16, 1865.

FIRST CODICIL.

Be it remembered, That I, JAMES RUSH, of the City of Philadelphia, M. D., do make this codicil to my last will and testament, dated the twenty-sixth day of February, A. D. eighteen hundred and sixty (1860), in manner following—that is to say:—

Whereas, By my said last will and testament I have provided that the bequests and devises to the Library Company of Philadelphia are to be held under the conditions and restrictions therein contained, and any others which I might thereafter impose; now, therefore, in accordance with, and in execution of that provision, I add and impose the following conditions, restrictions, and directions:—

First. One of my objects in giving my residuary estate for the use of the said Library Company was to express my respect and regard for my father-in-law, the late Jacob Ridgway, and my affection for, and gratitude to, his daughter, Phœbe Anne Rush, by erecting to their memories a monument which I hope will prove more durable than any other grateful record I could make, and be infinitely more useful to the community. As it was from them I derived the greater part of my property, which (under the special and prudent management of faithful and trustworthy agents) has enabled me to devote happily, and undisturbed, the latter part of my life to pursuits of scientific inquiry, which I have designed to be more beneficial than the more common enjoyment of an ample fortune, it is both just and proper that I should thus employ it, the more especially as Mrs. Rush had led me to believe that if she had survived me, she would have applied it to a similar purpose. Now, in order to carry out this intention in a public and permanent form, I direct my executor to have a marble slab, with the following inscription, on a plain ground, with a border of simple moulding, without any surrounding ornaments, placed and maintained on some appropriate part of one of the interior rooms of the new Library building, in which my private library and other personal effects are to be preserved.

THE RIDGWAY BRANCH
OF THE
PHILADELPHIA LIBRARY.
A MONUMENT TO THE MEMORY OF
JACOB RIDGWAY
AND OF HIS DAUGHTER,
MRS. PHŒBE ANNE RUSH.

Second. I direct my executor to have inserted in the Act of Assembly which will be required to carry out the provisions of my will and codicils, clauses enacting:—

First. That not more than one-fourth of the directors of the library shall belong to any one of the three learned professions of law, theology, or medicine. This clause is, however, not intended to exclude any of the present members from re-election.

Second. That the number of shares in the library shall be limited to those actually issued at the time of my death. But the managers, by their by-laws, shall have the authority to allow any respectable person depositing an amount and paying an annual sum to be fixed by the Board of Managers, to have the full and free use of the library, as completely as if they were shareholders.

Third. That the library shall not connect themselves with any other body, corporate or politic; my residuary estate will form a large fund for the use of the library, and I wish them to be free from every inducement to go beyond what I consider the legitimate objects of a library company.

Third. I will add that my reasons for choosing the Philadelphia Library Company for my residuary legatee and devisee are because it has always been conducted quietly and unobtrusively, steadily pursuing the appropriate objects for which such libraries were established, keeping entirely aloof from the excitement of politics and of other means whereby public bodies so frequently seek to obtain an evanescent and mischievous notoriety, and because during my early life I derived great pleasure and advantage from the use of its books, and from the readiness and civility with which they were always furnished me.

Fourth. I understand that the Managers of the Library Company have never applied any of its funds to defray the expenses of the very simple refreshments of which they are accustomed to partake at the monthly meetings of the Board, but have invariably paid them from their own personal means.

I highly approve of this course, which I fear is not very usual, and in order that their example may be followed by their successors, I direct that no part of the funds of the Ridgway Branch of the Philadelphia Library shall ever be used or expended in providing refreshments, lunches (so called), feasts, or entertainments for managers, visitors, shareholders, or for any other persons whatever.

Fifth. I do not wish that any work should be excluded from the library on account of its difference from the ordinary or conventional opinions on the subjects of science, government, theology, morals or medicine, provided it contains neither ribaldry nor indecency. Temperate, sincere, and intelligent inquiry and discussion are only to be dreaded by the advocates of error. The truth need not fear them, nor do I wish the Ridgway Branch of the Philadelphia Library to be encumbered with the ephmeral biographies, novels, and works of fiction or amusement, newspapers or periodicals, which form so large a part of the current literature of the day. The great object of a public library is to bring within the reach of the reader and student, works which private collections do not, and cannot contain, and which in no other way could be accessible to the public. Its excellence will depend—not upon the number of its volumes—but upon their intrinsic value, and I wish this principle to be carried out by the managers, who I hope will never be influenced by the too common ambition for mere numerical superiority.

Sixth. I give and bequeath all my pictures, my private library, my manuscripts, copyrights, and papers, and also those of my father, Dr. Benjamin Rush (in my possession) to the Library Company, to be by them placed in a room in the new building, and there safely kept. The books may be used as the other books of the Library Company, but this room is not to be opened to gratify idle or objectless curiosity.

Seventh. I will and direct that the building to be erected for the Philadelphia Library Company, under the provisions of

my will, shall have a basement story, of a height not less than eight feet six inches above the level of the pavement at its front, leaving the height of such basement in the rear to depend upon the grade for the drainage of the lot. The entrance to the front of the story, immediately above the basement, shall be by a broad flight of stone steps. Other entrances may be made in such places and manner as convenience or necessity may require.

Eighth. If the Philadelphia Library Company should omit or decline to accept my residuary estate on the terms and conditions in my will and codicils contained, or fail to comply with any of the preliminary stipulations and directions therein mentioned, then I give and devise the whole residue of my estate, real and personal, whatsoever and wheresoever the same may be, after paying and securing all annuities, bequests, legacies and devises, other than those to the said Library Company in this, or any future codicil contained, unto HENRY J. WILLIAMS, my executor, in my said last will named, his heirs, executors and administrators in trust therewith, to found and endow a public library entirely distinct from and independent of the Philadelphia Library Company, to be named and called the Ridgway Library, under the rules, regulations, conditions and stipulations in my said last will, and the codicils thereto expressed and contained. I wish that the greater part of my estate may be spent in completing the new library building. The annuities as they expire and fall into my residuary estate will be amply sufficient for all the legitimate purposes of a library.

Ninth. By my last will and testament hereinbefore referred to (dated February 26, 1860), I have given, bequeathed, and devised my whole estate, real and personal, unto HENRY J. WILLIAMS, my executor, his heirs, executors, administrators, and assigns, in trust; in the first place to provide for, pay, and comply with all legacies, gifts, annuities, bequests, and devises, declarations, and intentions, which may be contained or expressed in any codicil to the said last mentioned will and testa-

ment, which I might thereafter make, to be signed by me at the end thereof, whether formally drawn or not; now, therefore, in pursuance of the above provision, I hereby direct, declare, bequeath, and devise as follows:—

Tenth. I give and bequeath unto Mary Lee, a domestic in my service, the sum of two hundred dollars, to be paid to her within six months after my decease; and unto Anne Knee, my faithful attendant for some years, an annuity or yearly sum of two hundred dollars, payable half-yearly so long as she shall continue single and unmarried. The said legacy to Mary Lee and the annuity to Anne Knee to be paid to them only in case they shall respectively remain in my service until the day of my death, and in the service of my executor at the same rate of wages which they receive from me, so long as he may require them to do so.

Eleventh. I give and bequeath unto Mrs. Catharine Souder, widow of Jacob Souder, deceased, an annuity or yearly sum of two hundred dollars, to be paid to her half-yearly so long as she shall continue a widow.

Twelfth. I give and bequeath unto Thomas Craven, who has been for many years the faithful agent of my estate, an annuity or yearly sum of six hundred dollars, to be paid to him half-yearly for and during his natural life.

Thirteenth. I give and bequeath unto Miss Caroline Little and her sister, Mrs. S. H. Spruill, and to the survivor of them, an annuity or yearly sum of eighteen hundred dollars, to be paid to them and to the survivor of them so long as they or either of them shall continue unmarried, and if either of them should marry after my death, then the whole of the said annuity shall be paid to the other so long as she shall continue unmarried, as aforesaid.

Fourteenth. I give and bequeath unto Miss Mary Ritchie (the sister of Captain Ritchie, U. S. Navy), an annuity or

yearly sum of one thousand dollars, to be paid to her half-yearly, so long as she shall remain single and unmarried.

Fifteenth. I give and bequeath unto each of my nephews and nieces, Benjamin, Maria, S. Catharine, and Richard H. Rush, children of my brother, the late Richard Rush, an annuity or yearly sum of three hundred and sixty dollars, to be paid half-yearly to each of my said nephews for and during their natural lives, and to each of my said nieces so long as they respectively shall continue single and unmarried without any survivorship. These several annuities, with one of a similar amount which I intended to have given to their brother, the late J. Murray Rush, make together the sum of eighteen hundred dollars per annum, which I had designed for the children left by my brother, Richard Rush.

Sixteenth. I give and bequeath unto my niece, Mrs. Georgiana Clark, wife of E. A. Clark, Esq., and daughter of my sister, Mrs. Emily Cuthbert, of Lanoraie, Canada East, an annuity or yearly sum of eighteen hundred dollars, to be paid to her half-yearly so long as she shall continue the wife or widow of her present husband.

Seventeenth. I give and bequeath unto my nephew, Major Robert Manners, and to my niece, Julia Manners, children of my sister, Mrs. Mary Manners, now residing near Rochester, Kent, England, annuities or yearly sums of nine hundred dollars each, to be paid to my said nephew half-yearly for and during his natural life, and to my said niece so long as she shall continue single and unmarried.

Eighteenth. I give and bequeath unto my niece, Julia W. Biddle, wife of Colonel Alexander Biddle, of the city of Philadelphia, and daughter of my late brother, Samuel Rush, an annuity of eighteen hundred dollars, to be paid to her half-yearly so long as she shall continue the wife or the widow of her present husband.

Nineteenth. I give and bequeath my four Ridgway silver dishes to my brother-in-law, John J. Ridgway, now residing in Paris.

Twentieth. I give and bequeath all the personal wearing apparel, watches, jewelry, trinkets, &c., of my late wife and of myself, to my executor, to be disposed of according to verbal directions which I have given him, but without any obligation to account to any person whatever for them, or any of them, or for the disposition thereof.

Twenty-first. As the delays of the law, of the courts, or of the lawyers, may prevent me from disposing, in my lifetime, of my share of my brother, William Rush's estate, in case I should not have done so in my lifetime, I give and devise the whole thereof to my niece, Mrs. Georgianna Clark, daughter of my sister, Mrs. Emily Cuthbert, her heirs, executors, and administrators, as a remuneration for *her* mother's share of *my* mother's estate, of which she was thoughtlessly and ungenerously deprived.

Twenty-second. I will and direct that all legacy or collateral inheritance taxes chargeable upon the bequests, legacies, and annuities given or bequeathed by my last will and testament or by any codicil thereto, shall be paid from and out of my residuary estate, and that all the annuities therein and thereby given shall commence from the day of my death. I also will and direct that all the annuities which I have given, or may hereafter give to any married lady, shall be for their sole and separate use, freed from all debts, obligations or control of their respective husbands; and that all the annuities which I have given to any female, married or single, or which I may hereafter give them, shall be payable to them personally, or to their own order or receipt, signed and dated not more than three months before the same falls or becomes due, and shall not be subject to any anticipation, lien, or incumbrance, nor to any transfer or assignment by their own act, or by the act or operation of law, or otherwise. And in case any of the said female

annuitants shall attempt to alien, anticipate, encumber, or assign her annuity, or cause, or permit, or suffer, or procure it to be done, then and in that case, I authorize and empower my executor, in his discretion, to withhold the semi-annual payments thereof (which shall fall into and become part of my residuary estate), until the attempted alienation, anticipation, lien or encumbrance, transfer or assignment shall be cancelled, released, given up, and annulled. And I further will and direct that all the annuities which I have given, or which I may hereafter give, shall, upon the expiration of the periods for which they were respectively given, fall into and become part of my residuary estate.

Twenty-third. I direct my executors to dispose of the perishable part of my furniture, but not to have any auction upon any part of my premises. I wish it sold as quietly as possible, and would prefer a private sale, even if it were not so productive. I also direct my executor to keep my residence, No. 1914 Chestnut Street, for at least two years, unless he can dispose of it at private sale for a price which, in his sole discretion, he may think reasonable. At the expiration of that time he may dispose of it as he may think best.

Twenty-fourth. I have given verbal directions to my executor to have my funeral as private as possible, without any of the ordinary external indications of mourning.

No invitations are to be sent, except to my *nearest* relations, and I specially desire that I may be buried in silence. If circumstances will permit it, I should be glad that the remains of the late Jacob Ridgway, of his daughter, my late wife, and of myself, should be removed to the new library building, when it is completed, and be placed in some spot within the outward limits of the building, under a plain and simple tablet. The library itself is intended for their monument, and I want none for myself. If, however, the parties interested in the ground in which my father-in-law is buried should object to his re-

moval, then I desire that my wife and myself may be placed in the new library building as above directed. The library will then be her monument, and I desire to lie by her side.

Twenty-fifth. And I further will and direct that if any of the devisees or legatees or annuitants herein named shall attempt, themselves, or aid, assist, or encourage others to question, dispute, litigate, or object to the validity or effect of any part or portion of my will, or any codicil thereto, or of any gift or devise therein mentioned, then, and in that case, all the clauses in my said will or any codicil thereto conferring any benefit upon the person or persons aforesaid shall stand and be revoked and annulled, and the same shall be paid and given over to the said Library Company.

Twenty-sixth. Events and circumstances occurring within the last six years have obliged me to make several changes in my will, and I should have preferred that all my testamentary dispositions should have appeared as a complete whole, instead of being contained in separate instruments; but at my age life is precarious, and were I to have them condensed, redrawn, and re-executed, the most important part of the whole might fail under the operation of the ill-conceived, inconvenient, and mischievous law (resulting from a narrow sectarian spirit) which avoids all gifts to literary or religious institutions made and witnessed within a calendar month of the termination of a testator's life, no matter what his mental capacity may have been. To avoid the possibility of such a result, I must let it stand as it is, and add other provisions as they may occur to me.

Twenty-seventh, If any annuitant in any codicil to my last will named, whose residence is in the United States of America, shall leave this country after my death to remain either temporarily or permanently abroad, I will and direct that their respective annuities shall be suspended until their return; and the several half yearly payments becoming due during their absence shall fall into and become part of my residuary estate.

Twenty-eighth. I desire my executor to be allowed a commission of three per cent. upon the administration of my estate; and, in the case of the death of my brother-in-law, HENRY J. WILLIAMS, whom I have named as my executor in my last will, either before or after me, I nominate and appoint Colonel Alexander Biddle and Thomas Craven to be my executors in his room. They are not, however, to assume the executorship, or be qualified therefor, until after his death, resignation, or refusal to act.

In witness whereof, I have hereunto set my hand and seal this sixteenth day of May, An. Dom. eighteen hundred and sixty-six (1866).

(Signed), JAMES RUSH [SEAL.]

Signed, sealed, published, and declared by Dr. JAMES RUSH above named, as and for a codicil to his last will and testament, in our presence, who, in his presence and in presence of each other, at his request, have affixed our names as witnesses thereto.

J. S. FARMER, May 16, 1866.
RICHARD S. HUNTER, May 16, 1866.

ADDITIONAL CODICIL.

Be it remembered That I, JAMES RUSH, of the City of Philadelphia, M. D., do make this additional codicil to my last will and testament, dated the twenty-sixth day of February, A. D. (1860) eighteen hundred and sixty, in manner following—that is to say :—

First. I have given and devised the greater part of my estate to my executor for the purpose of erecting for the Library Company of Philadelphia a building not only large

enough to contain their present books, but also their probable increase for many years to come. Now, as I do not desire that the Library Company shall have an income greater than is required to provide for the legitimate (not a competing) increase of the library and their current expenses (not to be so large as to invite extravagance and waste), for which purposes the sums to be set apart to secure the legacies and annuities given by my said will and testament will be sufficient, I hereby authorize and direct my said executor to expend the whole remainder of my estate in the purchase of a lot and the erection of the library building, construction of book-cases, &c., leaving the said company only an income sufficient to defray the ordinary and strictly appropriate expenses of such an institution.

I have observed that large annual incomes in corporate bodies almost invariably lead to wasteful extravagance, and cause the institutions to become the prey of schemers, who, under the spacious cloak of liberality, or of being what is called public-spirited citizens, have no hesitation in spending the money of other people, in order to gratify their own vanity, or to promote their private interests. Such persons pass so much of their time in the distraction of change from one place of popular importance to another, that they have no opportunity for observation and reflection, to gain intellect enough to comprehend the purpose of books of knowledge, and therefore can be of no service, but rather the means of disturbing the quiet duties of a public library. Let them find instruction in its volumes with thankfulness and modesty, yet beware of admitting them to even a part of its government, or they will be sure—unless the managers are wise and watchful—by some manœuvre to direct the whole. They are consequential spendthrifts, who, under the plea of patriotic improvement and of ornamenting a city, misapply government taxes, and embarrass the funds of scientific, literary, and charitable, as well as moneyed, institutions, over which, by popular artifice, they have gained a control. As a condition, therefore, of my will, let the managers and contributors join to exclude all such per-

sons from the direction of the Library Company. It is from the quiet, unostentatious, and disinterested character of its directors, and of their management, that I have drawn the motives which induced me to choose the Philadelphia Library Company as the heir to my estate; and I would add a very influential consideration, that, having always conducted its affairs with prudence and foresight, it has never, by living beyond its means, in collecting more books than it has room for, been brought to the disgraceful pauper condition of those institutions which are constantly begging for thousands, and drawing upon the public purse by fairs and lotteries, in order to erect splendid buildings, or to pay debts rashly and inconsiderately incurred.

Second. I have in my will limited the extent of the lot to be purchased for the library building, as well as its locality; but as I desire that it shall have not only strength, durability, and accommodation, but also be of sufficient magnitude for any future or contingent, but not an ambitious or competing, increase of the library; in order to prevent, if possible, its being torn down in twenty years, and the lot sold at a speculative profit to suit the hyperbole of the times, I authorize and allow my executor, under a broad and thoughtful foresight, to increase the size of the lot, and select any situation he may deem most expedient, without regard to any provision of my will or codicils. I know that an ostentatious library, to keep up with the progress of our country, collecting too many books, may be like an avaricious man who accumulates money to the ruin of both his modesty and his intellect. But I have a forlorn hope that the mind may yet be improved beyond a patronage or even a toleration of those crowds of graver or more puerile fictionists who mislead the idle, and of those garbling compilers who overlook or corrupt the truth of fuller and more useful works by purloining from their pages, in attempting to abbreviate and render them popular for their own advantage.

Third. I have given the copyrights of all my works to the Library Company, and I will and direct that they shall, for the next half century, publish every ten years (and earlier and oftener if called for) an edition of five hundred copies of any or of all of them, so that they shall always have on hand a number sufficient to supply any demand which may be made for any or either of them, at a price not exceeding the cost of publication. I leave additions and corrections in the printer's copies, preparatory to a subsequent edition which I imperatively require to be published exactly as they are left. The original parts of them have been written *without assistance*, and I wish to be alone responsible for all the faults of thought, division, definition, and style, and of my corrected orthography, as I consider it.

An editor sometimes joins himself to a work by a supposed emendation of it. Let him in a book of his own justly blame what he pleases in mine, but not attempt to suit it to any future times and manners. Every writing should have its own times and manners. Let him prevent, not imagine typographical errors; let him strive to improve my spelling only when the world corrects its own redundancies and confusions on that point. In our important faults it is bad morality, even in science and literature, to try to escape the charge of errors by turning them over to others for correction.

Fourth. In order to insure, as far as is in my power, the application of the various devises and bequests which I have made for the use and benefit of the Library Company, in accordance with my wishes and directions, I hereby devise, direct, will, and declare that the whole and every part of my estate, real and personal, given or devised for the use and benefit of the said Library Company, and all the books and furniture purchased by them with the income and proceeds thereof, shall be taken and held by them (whenever the same by the provisions of my will, or of any codicil thereto, shall come into their possession, and become subject to their control,) as trustees, for

the uses, objects, trusts, and purposes in my said will, and any codicil thereto mentioned and expressed; and if the said Library Company shall in any respect violate, or omit to comply with, any of the provisions, conditions, or directions, regulations, or restrictions therein contained, then I will and direct that the Pennsylvania Company for Insurances on Lives and Granting Annuities, shall and may (or if they omit, neglect, or refuse so to do, any citizen of the city of Philadelphia) apply to the proper courts of this Commonwealth to compel the said Library Company to comply with the provisions of my said will and codicils, or to remove them from the said trusts, and transfer the whole real and personal estate aforesaid, including the library building, and all the books and furniture belonging to the Ridgeway Branch of the Philadelphia Library, unto the said Pennsylvania Company for Insurances on Lives and Granting Annuities; or, if they shall neglect or refuse to accept this trust, to some other trust company of the city of Philadelphia, who shall take and hold the whole of the said estates, real and personal, library building, books, and furniture aforesaid, in trust to collect and receive the whole income thereof, and apply the same to the uses, objects, and purposes of my said will and codicils thereof; permitting, however, if in their sole discretion they shall think proper so to do, but not otherwise, the said Philadelphia Library Company to occupy the Library building, and to take charge of the books, &c., of the Ridgway branch thereof; provided they shall do so under the absolute direction and control of the new trustees, who shall strictly supervise and entirely control and direct all the expenditures of my estate in relation thereto; and who may, at any time, remove them from the said charge, if the Library Company shall not submit and conform to such control and direction.

Fifth. If at any time Mr. Thomas Craven should take out letters testamentary to my estate, I will and direct that the amount of the annuity heretofore given him shall be credited to my estate, and deducted from the commissions to which he will

be by law annually entitled; and if those annual commissions should not equal the amount of such annuity, it shall be taken and considered as full payment thereof.

Sixth. I desire to express still more emphatically than I have yet done my wish and direction that the Library Company shall never make any efforts to rival the other libraries of America or of Europe in the mere number of volumes they contain. If the amount of books in the Philadelphia Library is simply recorded in its catalogue, it will be sufficient for every useful purpose; and what ever its number may be, it need not be held in the gloom of discontent at its inferiority to others, nor in a prideful exultation at its excess above them. Let it rest in a modest contentment in the useful quality of its volumes for the benefit, not the amusement alone, of the public; nor let it, over an ambitious store of inferior printed paper, flap its flimsy leaves, and crow out the highest number of worthless books. Let it be a favor for the eminent works of fiction to be found upon its shelves; but let it not keep cushioned seats for time-wasting and lounging readers, nor places for every-day novels, mind-tainting reviews, controversial politics, scribblings of poetry and prose, biographies of unknown names, nor for those teachers of disjointed thinking, the daily newspapers, except, perhaps, for reference to support, since such an authority could never prove the authentic date of an event. In short, let the managers think only of the intrinsic value of the additions to their shelves; for I hope (yet fearfully) that the streams flowing into the library will be clear, pure, and deep, diffusing healthy, truthful, and valuable information throughout the community, and not to be overborne by a common flood of cotemporary literature, that may sweep off the firm foundations of knowledge, and leave no high places for a useful intellect to rest upon, to extend its bounties, and to be secure.

To assist in accomplishing the purposes of instruction above declared, let the contributors strive to elect to the management, if they can be found, at least one or two persons of *general*

knowledge,—men of more than common college and high-school education, with broad observation, reflection, and taste, and liberal thoughts; not sectarian to any of the professions, nor to the gains of trade and speculation, but those who have been called "men of good choice," and who may have wider views in government and selection than are commonly taken by the conventional and popular character of most public beneficiaries; recollecting not only there is safety in the multitude and agreement of counsel, but that wisdom, too, should there be found which will insure safety in giving the broadest intellect with its widest compass the opportunity to enlighten, to caution, and to extend the capacity of those whose occasions, or means, or disposition may have prevented their thinking it necessary to go beyond the self-satisfied character of a majority.

In witness whereof I have hereunto set my hand and seal, this eighteenth day of April, An. Dom. eighteen hundred and sixty-seven (1867).

(Signed) JAMES RUSH. [SEAL.]

Signed, sealed, published, and declared by the above named Dr. James Rush, as and for a codicil to his last will and testament, in our presence, who, in his presence and in presence of each at his request, have hereunto set our hands as witnesses thereto.

J. S. FARMER, April 18th, 1867.
R. S. HUNTER, April 18th, 1867.

The testator, on the 18th of May, 1869, eight days before his death, agreed, through Mr. Williams, for the purchase of a square of ground situate at Broad and Christian streets, intending that the library building should be erected on that lot.

The conveyance was not executed until some time after the death of Dr. Rush.

Between the 18th of May, the day the contract for the purchase bore date, and the day of the death of Dr. Rush, some

conversation passed between Dr. Rush and Mr. Williams as to whether the Library Company would approve of the location (Mr. Williams' testimony, page 197 Examiner's Report.)

After this conversation, and in consequence of it, as it would seem, Mr. Williams called upon Mr. Henry Wharton and Mr. Alexander Biddle to obtain their views on the subject.*

These gentlemen are all of the highest character. There can be no doubt what each says he believes to be the exact truth.

They failed to understand each other, owing, probably, to the fact that the conversation was hurried, and Mr. Williams and Mr. Wharton, at least, were looking at the matter from different stand-points, and were on an unequal footing so far as their knowledge of Dr. Rush's will was concerned.

Mr. Wharton, under the impression that the lot at Broad and Christian streets was to be given for the building, with a large endowment fund to extend and increase the library (meaning the books), expressed it as his personal opinion that the Directors ought to advise the stockholders to accept this gift, rather than that such a munificent gift should be lost to the City of Philadelphia. (Examiner's Report, p. 22.)

Mr. Williams, knowing the contents of Dr. Rush's will, and what he himself intended to say, had a different impression of the conversation, and takes the result of the conversation to be an absolute approval by Messrs. Wharton and Biddle of the projected purchase (Examiner's Report, p. 207), and on the strength of that conviction, reported the conversation in that sense to Dr. Rush.

Mr. Biddle's recollection of the conversation is given at page 222 of the Examiner's Report.

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* Mr. Williams, as a Director of the Library, had, on the 24th of April, 1869, preceding, been appointed, with Mr. H. Wharton and Mr. A. Biddle, a committee of three to select a suitable lot for a library building. On the 4th of November, 1869, this committee seems to have been changed for another, consisting of Messrs. Wharton, McCall, and Morris Waln, whose action resulted in the purchase January, 1870, of a lot on the N. W. corner of Locust and Juniper streets, 110 feet on Locust street by 185 feet in depth. [Examiner's Report, pages 142, 143.]

Mr. Williams testifies (page 207, Examiner's Report) that about the second day after the interview with Messrs. Wharton and Biddle, when he was seated by Dr. Rush's bed side, the Dr. turned and said, "Harry, now you will promise me to put the building on that lot." I said, "Certainly, Doctor, if you desire it, I will promise you that I will put it there, and nowhere else." The doctor merely expressed his satisfaction.

At a meeting of the Directors of the Library Company, held June 3, 1869, (pages 112 and 193, Examiner's Report), Mr. Williams, an executor, laid on the table a certified copy of the will of the late Dr. James Rush, and requested that the Board would take immediate steps to ascertain the decision of the Library Company upon the question of accepting the devises and bequests contained in Dr. Rush's will, on the conditions therein expressed. To consider this question a special meeting of the Library Company (that is of the stockholders) was called for the 29th day of June, 1869, at 12 M., and Messrs. Hare, McCall, and Wharton were appointed a committee to examine the will of Dr. Rush, and report upon the legal and other points involved in accepting the trust therein created, and to report at an adjourned meeting of the Board to be held on Thursday the 10th June, 1869.

The meeting of the Directors on the 10th June, 1869, and subsequent adjourned meetings, the proceedings at which are reported on pages 113, 119, and 193 *b* of the Examiner's Report developed a great difference of opinion between the executor and some of the Directors as to the expediency of accepting the devise clogged with the conditions and regulations which the testator had enjoined.

These differences of opinion manifested themselves also at the stockholder's meetings, (Ex. Rep., p. 119, 120, 121.)

On the one side it was maintained that the munificence of the gift ought to quiet all cavils as to the singularity of some of the provisions of the will, if singularity there was, which this side did not admit, and that the site should be accepted without hesitation. The majority of the Directors, and a large

body of the shareholders were of a different opinion, and wanted time to consider and weigh the pros and cons, and to afford an opportunity of advising with Mr. Williams about the site for the building. Unfortunately, at the outset a misunderstanding as to Mr. Williams' wishes with regard to the action of the Board as to the disposal of certain articles of personal property not mentioned in the will, but verbally to Mr. Williams, caused an estrangement and a sense of ill-treatment on the part of the executor.

How he regarded what took place appears from the closing paragraphs of his letter of December 30th, 1870, addressed to Dr. Charles Willing, (printed at large as Exhibit B, on page 29 of the Answer, and on page 44 of this report), and by his testimony, page 210, Examiner's Report, and his letter to Mr. Whitman, page 157, Examiner's Report. The impression made upon the Directors is testified to by Mr. Wharton, page 25, Mr. Cramond, page 58, Judge Hare, page 66, Dr. Norris, page 68, Mr. Lewis, page 69, Mr. McCall, page 90, Mr. Whitman, page 48, Dr. Willing, page 54, Mr. Biddle page 221, and the minutes of the meeting of the Directors, January 5th, 1871, Ex. Rep., page 156, Exhibit No. 18 *e*. The letter of Mr. Whitman, Sec., to Mr. Williams, Exhibit No. 38, page 156, Ex. Rep., and Mr. Williams' answer, page 157 of Ex. Report. There was evidently a misunderstanding.

The master is of opinion that this controversy, though to be regretted, has really no bearing on the questions raised by the pleadings.

At a meeting of the Directors of the Library Company, held December 10th, 1870, the following proceedings are recorded.

Exhibit No. 17. Page 151 Examiner's Report.

[At a meeting of the directors, Dec. 10th, 1870,]

The Committee on the Rush Legacy, appointed June 3d, 1869, reported that in accordance with the resolution of the Board, June 9th, 1870, the counsel of the Company had pre-

pared and presented to the Court of Common Pleas a memorial praying for amendments to the charter of the Company, and that the said court had duly approved of the amendments submitted, and that the same now constitute part of the charter of the Company as required by the will of Dr. Rush, whereupon the following resolution was adopted:

Resolved, That the Secretary be directed to inform Henry J. Williams, Esq., the executor of the will of Dr. Rush, of the amendments of the charter of the Company, and to notify him that the Company are now ready to undertake the performance of their duties as Trustees for the Ridgway Branch of the Library.

The following preamble and resolutions were further adopted:

Whereas, At a meeting of the members of the Library Company held on the 29th day of June, 1869, Mr. Williams, as Executor of Dr. Rush, expressed an intention of erecting the Library Building contemplated by the provisions of the said will, on the square of ground on the corner of Broad and Christian Streets in this city.

Now further Resolved, That it is the opinion of the Directors of this Company, that the removal of their collection of books to the site thus proposed, would under the circumstances, be destructive of the interests of the Library and contrary to the wishes of a vast majority of the Stockholders.

Resolved, That the Directors take this, as the first opportunity since the Company has been authorized by law to accept the trusts of Dr. Rush's will, to express to Mr. Williams their earnest hope and request that he will reconsider his said intention of building on the site named.

Resolved, That Dr. Willing, Judge Hare, and Mr. Lea be appointed a committee to communicate these resolutions to Mr. Williams and to confer with him on the subject.

It was further Resolved, That the counsel of the Company be consulted with regard to the present rights and duties of the

Library Company of Philadelphia as Trustees for the Ridgway Branch of the Library.

Whereupon the following correspondence occurred :—

(Examiner's Report, p. 153.)

EXHIBIT No. 33.

Letter from Mr. Whitman to Mr. Williams, enclosing copy of petition to Common Pleas.

LIBRARY COMPANY OF PHILADELPHIA,
Fifth Street, below Chestnut,
Philadelphia, Dec. 12, 1870.

HENRY J. WILLIAMS, Esq.

MY DEAR SIR :—I have been directed by the Directors of the Library to transmit to you the enclosed copy of the petition to the Court of Common Pleas, the resolutions of the company at a meeting held on the 25th May last, the resolution of the Directors passed on June 9, 1870, and the decree of the Court on the above-mentioned petition.

Yours, very respectfully,
W. E. WHITMAN,
Sec'y Philada. Library Co.

EXHIBIT No. 36. Ex'r Rep. p. 154.

MY DEAR SIR :—I acknowledge the receipt of your note of the 12th inst., enclosing a copy of the petition of the Library Company to the Court of Common Pleas and their decree thereon.

As I understand the will of Dr. Rush, the trusts for the benefit of the Library Company only arise when the building is completed and ready to be delivered to them. At that time the question of their compliance with the conditions prescribed by the testator's will, will have been carefully considered and determined.

Until then his executor does not think it either necessary or proper for him to form or express any opinion in relation to the course pursued by the company, to which he has always been designedly a stranger.

I trouble you with this solely to prevent my silence from being considered as an assent to or approval of the petition or decree.

Very respectfully, &c.,

HENRY J. WILLIAMS.

WILLIAM E. WHITMAN, Esq.,

Secretary P. L. Co.

December 21, 1870.

EXHIBIT No. 34. Ex'r Rep. p. 153.

Letter of Dr. Charles Willing, of Dec. 13, 1870.

916 Spruce Street, December 13, 1870.

DEAR SIR:—I take this opportunity of enclosing a copy of resolutions passed by the Board of Directors of the Philadelphia Library Company, and to ask when it will suit your convenience to give the committee an interview to confer with you upon the subject to which they refer.

I remain with great respect, &c.,

CHARLES WILLING.

HENRY J. WILLIAMS, Esq.,

712 Walnut Street.

EXHIBIT No. 35. Ex'r Rep. p. 154.

Letter of Mr. Williams to Dr. Willing.

MY DEAR SIR:—

I shall be happy to meet the gentlemen named in your note either as a committee or as individuals, but I must say that I feel it impossible to make any change in the location of the

Library upon the lot selected by Dr. Rush himself. It seems to me a sacred duty to carry out the clearly and repeatedly expressed wishes of the testator, and to perform what he undoubtedly understood to be a fundamental condition of his bequest. I moreover fully believe that, a few years hence, the position selected by him for his Library Building will be in all respects admirably suited to the objects the Doctor had in view, and which he has expressed in his will.

I shall be in town on Monday, and will meet the Committee, if they desire it, at one o'clock, on that day, or on any other Monday they may name. I mention the hour and the day only to save trouble, and will accommodate myself to their wishes. If my office, 712 Walnut street, is more convenient, I will be happy to see them there, or at any other place they may name. With sentiments of great esteem and regard, believe me, &c.

HENRY J. WILLIAMS.

DR. CH. WILLING.
December 17, 1870.

EXHIBIT No. 37. Ex'r Rep. p. 155.

Letter of Dr. Charles Willing of December 22, 1870.

916 SPRUCE STREET, December 22, 1870.

MY DEAR SIR:—

In enclosing the reply of the Committee to your note of the 17th, I would desire to say that the Committee regards that note as your formal reply to the resolutions of the Board of Directors. If this is not in accordance with your intention in writing that note, pray address another to the Committee which may replace the former one.

I remain with great respect, &c.,

(Signed) CHAS. WILLING.

HENRY J. WILLIAMS, Esq.,
712 Walnut Street.

EXHIBIT B. Page 29, Answer.

CHESTNUT HILL, Dec. 30, 1870.

MY DEAR DOCTOR: I did not intend my note of the 17th instant to be a formal reply to the resolutions of the directors of the Library Company, nor to prevent the committee from having the conference they requested. So far from it, that I mentioned both time and place at which I would have been happy to meet them. I cannot, however, conceal my conviction, that nothing they could say would change my intention of placing the Ridgway Branch of the Philadelphia Library on the lot purchased by Dr. Rush for its site; and after all that has take place, I must confess I am a little surprised that they should again ask me to do so. Judge Hare and yourself must both be fully aware (for I have stated them, I believe, both orally and in writing) of the circumstances connected with the selection of that lot for this purpose; but, as Mr. Lea, one of your committee, is a new member, I shall repeat them, even at the risk of being unnecessarily tedious in my answer; for I cannot believe the directors could expect *me* to make the change they desire, if they fully appreciated my position.

Some weeks before Dr. Rush's death he was very anxious to have the location of the intended building finally fixed and settled; and he desired me to ascertain the size and cost of all the vacant lots on Broad Street, on which street he desired it to be placed. I procured statements of the sizes and prices of all I thought at all suitable, from Vine to South Street, but he was satisfied with none of them. Another gentleman brought him a plan of the lot on Christian Street, and he was so much pleased with it that he directed me to buy it at once. I did so; and when the contract was signed and a part of the consideration paid, he expressed great pleasure that it was concluded, as it relieved his mind from all anxiety. Some days after, he recurred again to this subject, as it had probably occurred to

him that he had given me an absolute discretion as to the situation of the library by the terms of his will, and that I might be induced to overrule his decision after he was gone. He called me to his bedside and asked me to give him a promise that I would *build the library on that lot and nowhere else.* I gave him this promise as fully and solemnly as language could express it, and he then thanked me and said he could now die in peace. Now, do you think it would be at all consistent with truth and honesty for me voluntarily to violate a pledge given under circumstances which render it as sacred as an oath, and made to a dying man who had confided to me the management of his whole estate? Would you, with your well-known delicacy and sensibility to all honorable engagements, feel yourself justified in doing so, were the case your own, and should I not lose your respect and regard (which I value very highly) were I to hesitate for a moment as to what was my duty?

And what is the reason assigned why I should do this?—"to gratify the wishes of the shareholders." But have these shareholders shown such an appreciation of the magnificent gift of Dr. Rush (which is only subject to their future acceptance) as to render his representative very desirous to comply with their wishes, in opposition to the repeatedly and earnestly declared intentions of Dr. Rush, and to his own deliberate judgment? When the question was first presented to them, these shareholders, by a majority of five, accepted his bequest, but, by a very much larger majority, refused to pass a resolution expressing their gratitude for his gift. True, at a subsequent meeting they adopted such a resolution, but it was only on second thoughts; and it may be doubted whether it was not agreed to because of the extraordinary position in which they would be placed, if they were to take his money and refuse to admit they were obliged to him.

I have said that to assent to the wishes of the shareholders would be in opposition to my own deliberate judgment, and I mean this in its fullest extent. I think that, considering its size, its price, and the description of library Dr. Rush intended

to endow, there is not an attainable position on Broad Street, of sufficient size to meet his views, which is preferable to the one he has himself selected.

There is one other matter to which I refer rather unwillingly, but as I shall not probably have any further communication with the directors on this subject, I have determined to mention it.

During the three or four weeks previous to Dr. Rush's death, he desired me on various occasions to make pencil memoranda of several articles which he directed me to give to his friends as remembrances. I reduced these memoranda to form; wrote them in ink, and read them over to him in presence of Miss Little, a friend who was constantly with him. They were not signed because his physical weakness rendered his writing a labor, and he did not wish his tremulous signatures to be attached to his will. I said to him no one could object to them but the Library Company, and if they gave their assent, however informally, I would assume the pecuniary responsibility and carry out his instructions. I mentioned all these facts to the directors, at one of the only two meetings I have attended since Dr. Rush's death, and stated the value of those articles would not exceeed $2000—and several were intended for me, but I declined to take any of them, and spoke only for the sake of others.

No notice was taken of this request, and after waiting many months I consulted my counsel whether I might not consider these memoranda as part of Dr. Rush's will and carry them into effect.

They both advised me strongly against it, and I was obliged to inform the intended beneficiaries, that for want of the assent of the Library Company, they could not have their remembrances.

Now, the Library Company give me notice that the company "are now ready to undertake the performance of their duties as trustees for the Ridgway Branch of the Library,"—*duties* and *trusts* which I understand commence only when the build-

ing is finished; but I am not aware that they have shown, in any one instance, a disposition to comply with the last instructions of one whom I shall always consider as their munificent benefactor.

Very truly yours,

H. J. WILLIAMS.

DR. CH. WILLING,
Chairman.

EXHIBIT No. 18*e*.

[At a meeting of the Directors, January 5, 1871,]

The letter of Mr. Williams to Dr. Willing, of December 30, 1870, was read. Prout the same, printed in defendant's answer, p. 29.

"The Committee was then discharged, but the Board considering that the latter part of Mr. Williams' letter should receive some immediate reply, instructed the Secretary to inform Mr. Williams that the members of the Board, as far as in their power, were ready to give their consent to carrying out the wishes of Dr. Rush, as expressed in the unsigned papers referred to in Mr. Williams' letter, of which they have now for the first time heard, in such way as counsel should advise; and that they would have expressed their consent previously, had they been sufficiently acquainted with the facts mentioned by Mr. Williams."

EXHIBIT No. 38. Ex'r Rep. p. 156.

Letter of Wm. E. Whitman of January 12, 1871.

PHILADELPHIA, January 12, 1871.

HENRY J. WILLIAMS, Esq.:—

DEAR SIR:—Your letter of December 30, addressed to the Chairman of our Committee, Dr. Willing, was laid before the Board of Directors of the Library, at their meeting on the 5th inst.

I am requested by the Directors to express to you the regret with which they have learned from your letter of the 30th ult. that there has been any misunderstanding about the effects which Dr. Rush desired to be dispooed of in the manner you mention.

The impression on the minds of the Directors was that you did intend to follow out the wishes of Dr. Rush in relation to those articles, and that your allusion to the subject was a notice that you would do so.

As you desire some formal action of the Board, I am directed to say that they are ready to give their consent in such manner as counsel may advise, and that they would have expressed this readiness sooner had they been advised of the facts.

I am, sir, very respectfully yours,

W. E. WHITMAN,

Secretary Library Co. of Philadelphia.

EXHIBIT No. 39. Ex'r Rep. p. 157.

Letter of Mr. Williams to Mr. Whitman.

MY DEAR SIR:—

You are under a misapprehension in saying in your note of the 12th inst. that I desired some formal action of the Board in relation to the fulfilment of the verbal directions of Dr. Rush, as to the remembrances to be given to his friends. I certainly did not ask for it in my letter of the 30th Dec. 1870, nor do I at all desire it at this late day. It would have been at the time of Dr. Rush's death most gladly received, and I supposed that upon simply stating, which I am sure I did very distinctly, that it only required the approval of the Board to enable me to comply with his wishes, that approval would have been cordially and instantly given. I know I waited for it long and anxiously, and was exceedingly surprised and disappointed at not obtaining it. I never imagined that the Board intended to leave me to bear not only the *pecuniary* but also the *moral*

responsibility of disposing of his effects, of which they were to be ultimateiy the residuary legatees, when they perfectly well knew I had no legal right to do so. Their assent, without releasing from the former, which I was aware was not in their power, would have relieved me from the latter, which I did not choose to assume.

I do not see what construction I could put upon their silence, except that they declined acceding to my request, nor do I know how I could have "advised them of the facts" more fully than I had done by my statement at the Board.

Under these circumstances, I informed Dr. Rush's family that, although I could not carry out his instructions as he designed, yet I could dispose of these articles at private sale, and that they could have all or any of them at their appraised values. Some of them accepted this offer, and have received and paid for their intended gifts—others declined it.

The matter has thus been settled for about a year, and I not only do not desire, but I am entirely unwilling, to disturb it. It must rest as it is. I have, however, the consolation of knowing that it was not from any omission of mine that Dr. Rush's kind intentions have been frustrated.

My object in referring to this subject in my last letter was only to inform the Board of the course which the want of action on their part, formal or informal, had compelled me to pursue.

Very truly and respectfully,

HENRY J. WILLIAMS.

W. E. WHITMAN, Esq., *Secretary.*
CHESTNUT HILL, January 16, 1871.

On the 19th of October, 1869, the stockholders at a meeting convened for that purpose agreed to the following resolution:

Resolved, That the Stockholders of the Library Company of Philadelphia do hereby accept the legacy of Dr. James Rush, according to the terms expressed in his will.

And the following proceedings were had:

Hon. J. Ross Snowden offered the following resolutions:—

Whereas, A majority of the Stockholders of the Library Company of Philadelphia has accepted, by a stock-vote, on the 19th inst., the legacy of the late Dr. James Rush, according to the terms expressed in his will; therefore

Resolved, That the resolution adopted by the said vote be entered on the minutes of the Library Company as the acceptance by said Company of the munificent and philanthropic bequest of Dr. Rush.

Resolved, That a Committee, to consist of three Stockholders and three Directors, be appointed to co-operate with the Executor of Dr. Rush in carrying into effect the provisions of said will.

Resolved, That the early construction of a fire-proof building to contain the valuable books, papers, and other treasures of the Company, as well as those which shall hereafter be obtained, is an object of the highest importance and demands the earnest and immediate attention of the Company and of the Executor of Dr. Rush.

Resolved, That a copy of the resolution adopted by a vote of the Stockholders, together with those preceding, be sent to Henry J. Williams, Esq., the Executor of Dr. Rush.

These resolutions were put to the vote and lost.

The following, offered by Mr. Fraley, was then adopted:—

Resolved, That the further consideration of the bequest of Dr. James Rush be postponed, and that a committee, consisting of five members and the Directors, be appointed, who shall take the subject into consideration and shall recommend to the members, at a meeting to be called by the Directors, such action as they may deem expedient or necessary.

The chairman appointed on behalf of the Stockholders, Frederick Fraley, Henry M. Phillips, Edward King, James S. Biddle, and J. Dickinson Logan.

Exhibit No. 8.

[Meeting of the Directors, January 6, 1870.]

"A letter from Henry J. Williams, Esq., having been read, tendering his resignation as a member of this Board, the following resolutions were unanimously agreed to:—

"*Resolved*, That the Board have heard with great regret Mr. Williams' intention of resigning, and that in view of their great esteem and regard for him, and from their grateful remembrance of the highly important and valuable services he has rendered to the institution, they desire that he will reconsider his purpose of leaving the Board with which he has been so long associated, and gratify them by withdrawing his letter of resignation.

"*Resolved*, That the Secretary communicate the above to Mr. Williams."

Exhibit No. 30.

Mr. Williams to Mr. Whitman.

My Dear Mr. Whitman:—I have received the resolution of the Board of Directors of the Philadelphia Library Company, which you were good enough to send me, and beg leave to express my grateful thanks for the kind expressions it contains. I came to the conclusion that it would be better for me to leave the Board, after careful and deliberate consideration, and I still adhere to that opinion. There are so many doubts, differences, and difficulties among the members, in relation to the bequest of Dr. Rush, its extent, construction, and value, that my presence would only render discussion embarrassing to the Board, and therefore far from agreeable to myself; besides, I learn from the public prints that the shareholders rejected a resolution directing a copy of their acceptance of Dr. Rush's bequest, with an acknowledgment of their high appre-

ciation of the confidence he had reposed in them, and of their cordial willingness to carry out, in the most beneficial way, his philanthrophic intentions, to be communicated to his executor.

Now, I do not think it desirable for me to retain a seat at the Board as the representative of those shareholders, and I must, therefore, repeat my request that my resignation may be accepted.

I beg you to convey to the Board my best wishes for the prosperity of the library, and for the welfare and happiness of every individual member.

Very truly yours,

HENRY J. WILLIAMS.

WM. E. WHITMAN, Esq.,
Secretary.
January 11, 1870.

A great deal of testimony was given before the Examiner, and much was said in argument before the Master, on the question whether Mr. Williams was or was not present when a certain report made by Messrs. Hare, McCall and Wharton was read to the Board, June 10, 1869. The report is Exhibit No. 43, and is printed on page 193*b*—Examiner's Report. The Master is of opinion, from the evidence, that Mr. Williams was present at the meeting in question, but did not hear the report read, probably had gone before reading. As a matter of fact it has little, if any, bearing on the questions in issue.

The letter of Mr. Williams to Dr. Willing of Dec. 30th, 1870, in which he expresses the determination to build on the lot at Broad and Christian Streets, and "nowhere else," according to his "promise" given to Dr. Rush "as fully and solemnly as language could express it," seems to have determined the complainants to file the bill in this case.

The theory of the bill is, that the plaintiffs have an interest in the nature of property in the discretion to be exercised by

Mr. Williams, whether the will is regarded simply as a devise to them in trust for themselves and others or whether it is held to create a charity of which they are to be the trustees.

In either case, when the building is completed and conveyed to them, it is to be used to contain their books, as well those which they now own, either in their own right or in trust, as those which may be acquired from the estate given by the will. That the discretion as to the site, being in its nature capable of exercise in a way which would make it impossible for them to accept, their interest is a contingent one depending on the site being such as they can accept.

That while it is true, they can only enjoy the property, or exercise the trust on the terms which the testator has imposed, that is subject to the *discretion* of the executor, as to the site and character of the building to be erected, they are equitably entitled to the exercise of his untrammelled discretion. That if he has committed himself beforehand to any particular site, whether that commitment has followed from unworthy or from the purest motives, from bribery, by a person having a lot to dispose of, or from a promise made to a munificent testator, it is equally in equity a fraud on the trust. That in the view of equity, no one avowedly so committed is in a position to exercise a discretion, such as is confided to the defendant by the following words in the second paragraph of the second or additional codicil, to wit:

"Second. I have in my will limited the extent of the lot to "be purchased for the Library Building, as well as its locality; "but as I desire that it shall have not only strength, durability, "and accommodation, but also be of sufficient magnitude for "any future or contingent, but not an ambitious or competing "increase of the Library, in order to prevent, if possible, its "being torn down in twenty years, and the lot sold at a specu- "lative profit to suit the hyperbole of the times, *I authorize* "*and allow my executor, under a broad and thoughtful foresight,* "*to increase the size of the lot, and select any situation he may*

"*deem most expedient without regard to any provision of my "Will or Codicils.*"*

These are the principles which the complainants seek to have enforced by the I., II., IV., and VII. prayers for relief.

The III., V., VI., prayers cannot be considered as before the master; they were not discussed before him.

The defendant denies that it is the duty of complainants, and avers that they have no right to apply to this Court for relief, and demurs to so much of the bill as charges such right and duty, and to the whole of the relief prayed for, and assigns as causes of demurrer:

"I. There has been as yet no valid acceptance of the bequests of the will. There can be no binding agreement to accept them until after the entire completion of the building. Dr. Rush gives no estate to complainants until after such completion. The alleged acceptance of the fifth of October, 1869, is not binding upon them or their successors, but is a simple expression of willingness to receive a gift, and is revocable until receipt of a conveyance.

II. None of the preliminary conditions prescribed by testator have been complied with.

a. No binding agreement to comply with these has ever been executed and delivered. This is made a condition precedent to the vesting of any estate or right.

b. The clauses (see p. 3 of this answer) which the testator ordered to be inserted in an Act of Assembly, have not been

* The will gave the whole estate to Henry J. Williams, his heirs and assigns, to be held by him for and upon the following trusts and purposes, and upon no other use, trust or purpose whatsoever. In trust, * * * In trust, to select and purchase a lot of ground not less than one hundred and fifty feet square, situate between Fourth and Fifteenth Streets, and Spruce and Race Streets, in the City of Philadelphia, and thereon to erect a fire proof building, sufficiently large to accommodate and contain all the books of the Library Company of Philadelphia, whose library is now at the corner of Fifth and Library Streets.

inserted in the one drafted by the counsel of the company, nor in any other.

c. The Act of Assembly drafted by complainants virtually prohibits them from acting as trustees under Dr. Rush's will, because it enacts that their property, books, &c., shall not be subject to the conditions of that will, but shall remain entirely under their own absolute control.

d. The order of the Court by which they have sought to dispense with what the testator prescribed, is in direct opposition to the Act of Assembly by which it is pretended to have been authorized. The Act permitted the company to act as trustees "only in such manner that the real and personal property of "the company, held by them in their own right," should be in no wise affected by Dr. Rush's will and codicils, "but should "remain and be under their own entire and exclusive control "and disposition." The order of Court attempts to interfere with this control and disposition, by saying who shall act as directors, and the number of stockholders who shall use it, and by forbidding a connection with any other body corporate or politic. It is therefore utterly null.

e. The reservation of an exclusive control in the Library Company over their books, &c., is in opposition to the condition imposed by testator, that there must be no non-exclusion of books differing from "ordinary or conventional opinions."

f. The reservation of this control will prevent the complainants from binding themselves to use the building for the purposes of their library, and as a receptacle for their books. Without a compliance with these conditions, there can never be any conveyance or delivery.

g. The order only provides that "*so long*" as the Library Company shall act as such trustees, they shall do so under the conditions imposed by Dr. Rush's will; but I am advised that I have a right to insist that upon conveyance and delivery of the building they must bind themselves to a perpetual subjection to those limitations, as the consideration to be given for Dr. Rush's magnificent present.

III. The alleged acceptance has been withdrawn. By their acceptance on the twenty-fifth of May, 1870, of the said Act of Assembly, the complainants distinctly elected, as they allege, "not to allow their collection of books to be removed to the building to be erected by the defendant, if placed on the proposed site," and this election, so far as appears from the averments in their bill, was made in the belief that I was acting in entire accordance with the directions of the will, for they aver no knowledge until the receipt of my letter of the thirtieth of December, 1870, of my having made any, supposed to be disqualifying, promise. The purchase, in January, 1870, of the lot at Locust and Juniper Streets, with a view to erecting a library building thereon, in direct opposition to the provisions of the will, was also, it is charged, a withdrawal of their former acceptance.

IV. The complainants are not a charitable corporation, nor within the protection afforded to charities by courts of chancery.

V. The interference by the Court in favor of a *private* corporation, such as the complainants are, will be in prejudice of a great charity for the benefit of the *public*, which "the Ridgway Library" will be, if endowed under the provisions of Dr. Rush's will, in the event of the refusal or omission of the complainants to accept the devises in their favor.

VI. The Court has no jurisdiction to control my discretion in the selection of a site for the building, nor in the execution of any of the trusts of the will.

24. I pray that I may, under the provisions of the rule of Court in such cases made and provided, be permitted to avail myself of all matters of defence in law, or to the merits of the bill, in my above answer stated, of which I might have availed myself by demurrer, or plea in bar, with the same force and effect as though I had filed a separate demurrer or demurrers, plea or pleas in bar."

It becomes the duty of the Master to consider each of these grounds of demurrer, which he will do seriatim, and then consider the plaintiff's title to the relief prayed for in the I, II, IV, and VII prayers of the bill.

The first reason assigned for the demurrer the Master reports to be untenable.

The resolution reported by the committee on the 5th October, 1869, and approved at the stockholders' meeting on October 19, 1869, was in these words:

Resolved, That the stockholders of the Library Company of Philadelphia do hereby accept the legacy of Dr. James Rush, according to the terms expressed in his will, (pages 129 and 140, Examiner's Report,) page 49 of this report.

The building will not, under any circumstances, come into their possession, nor will their active duties as trustees begin until the building is completed and deeded to them.

But their resolution to accept the legacy, "according to the terms expressed in the will," together with the steps taken to put themselves in position to accept the deed, the Master is of opinion, give them a standing to invoke the authority of this Court for the protection of their rights and the due enforcement of the trust. (See this report on the prayers of the bill.)

As to the second ground of demurrer, viz.: "None of the preliminary conditions prescribed by testator have been complied with."

As to subdivision "a," to wit: "No binding agreement to comply with these has ever been executed and delivered; this is made a condition precedent to the vesting of any estate or right," the Master is of opinion that the demurrer is not well founded.

The will provides that *before any conveyance* is made to the Library Company they shall, either by an alteration in their charter or in some other way satisfactory to the executor, bind themselves to conform to and comply with certain conditions expressed in the will and codicils. The company has procured an Act of Assembly (Exhibit No. 14, This Re-

port, page 8), and certain amendments to their charter (Exhibit No. 16, This Report, pages 10, 11). The executor, by his letter to the Library Company, dated December twenty-first, 1870 (this Rep., pp. 41, 42), acknowledging the receipt of a copy of the proposed amendments writs. "As I understand the will of Dr. Rush, the trusts for the benefit of the Library Company only arise when the building is completed, ready to be delivered to them. At that time the question of their compliance with the conditions prescribed by the testator's will, will have been carefully considered and determined; until then the executor does not think it either necessary or proper for him to form or express any opinion in relation to the course pursued by the company to which he has always been designedly a stranger."

If the Master is right in the view he has expressed of the first ground of demurrer, the same argument must suffice to defeat that now under consideration. The complainants have done what they could. If the executor is right in saying, as he probably is, that he is not bound to say whether the conditions have been complied with satisfactorily to him until he comes to make the conveyance, that does not lessen the prospective interest of the complainants either as trustees or *cestui que trusts*, which is sufficient to enable them to intervene for the protection of the property against what may be the illegal or inequitable action of the Trustee.

As to subdivision "b," of the second ground of demurrer, viz.: "The clauses which the testator ordered to be inserted in an Act of Assembly have not been inserted in the one drafted by the counsel of the company, nor in any other,"

The Master is of opinion that the testator cannot be held to have meant by the language used in the second paragraph of the first codicil that an Act of Assembly must be used, whether necessary or not, to carry out the provisions of the will and codicils, or that the Act of Assembly used must necessarily enumerate *totidem verbis* all the alterations contemplated.

The Act of 23d February, 1870, authorizing the Library Com-

pany to accept the trust and empowering them, after acceptance of the Act, to apply from time to time to the Court of Common Pleas for the City and County of Philadelphia, "for such further amendments to the charter of the company as may be necessary to carry into effect the conditions and provisions of the will and codicils in accordance with the directions of this Act," followed by an application to the Court of Common Pleas setting out the amendments required according to the terms of the will, approved by the court, is the same in effect as if the amendments had been each inserted in the Act of Assembly, and is a sufficient compliance with the provisions of the will.

Sub-divisions c, d, e, and f, of the second ground of demurrer, the Master thinks are not sustained. These several subdivisions are based on the same idea, viz.: that there is something in Dr. Rush's will which deprives the Library Company of its own property, and, therefore, makes inconsistent with the acceptance of the trust the provision of the Act of Assembly declaring that their own property shall remain "under their entire and exclusive control and disposition." The Master does not so read the will. He is of opinion that the Act of Assembly, so far as this is concerned, declares only what the law would have declared had nothing been said on the subject.

By the *will*, the building, when completed, is to be conveyed to the Library Company, "for the uses and purposes of their library, *and for no other use and purpose whatever*," "provided they bind themselves, either by an alteration in their charter, or in some other way satisfactory to the executor, not to permit lectures, &c., &c., on the lot of ground, or in the building, or the formation of any museum thereon or therein, or expend any of the funds derived from him in defraying the expenses of such therein or thereon. The accounts of the receipts and expenditures of the estates derived from him, are to be kept separate and distinct from all other accounts of "The Ridgway Branch of the Library Company of Philadelphia."

There is nothing in all this which assumes any control over the property of the Company.

The first codicil adds to the uses and purposes for which the property was to be conveyed, that of a "monument," and directs the executor to have inserted in the Act of Assembly which will be required clauses enacting:—That not more than one-fourth of the directors shall belong to any one of the three learned professions; that the number of shares in the library shall be limited to those actually issued at the time of testators death; that the library shall not connect themselves with any other body, corporate, or politic; and that no part of the funds of the Ridgway Branch of the Philadelphia Library shall ever be used or expended in providing refreshments, &c. All these may be agreed to without the Library Company surrendering their control over their own property.

The declaration in this codicil, that the testator does not wish any work excluded from the Library on account of its difference from ordinary or conventional opinions, relied upon in subdivision "e," is an expression of a wish merely, and must, in the nature of things, be left, as to its execution, to the good sense of the trustees.

This codicil, in its sixth clause, changes the will in that part of it which forbids museums, or collections of paintings to be kept in the building. By this section the testator requires a room to be set apart in the new building, in which to keep all his pictures, his private library, his manuscripts, copyrights and papers, and those of his father, Dr. Benjamin Rush.

In the fourth section of the additional or second codicil, the testator uses this language: "In order to insure, as far as is in my power, the application of the various devises and bequests, which I have made for the use and benefit of the Library Company, in accordance with my wishes and directions, I hereby devise, direct, will and declare, that the whole and every part of my estate, real and personal, given or devised for the use and benefit of the said Library Company, and all the books and furniture purchased by them, with the income and proceeds thereof, shall be taken and held by them (whenever the same, by the provisions of my will, or of any codicil thereto, shall come

into their possession, and become subject to their control), as trustees for the uses, objects, trusts and purposes in my said will, and any codicil thereto mentioned and expressed."

It is not sought to extend the trust, or to interfere with or control the property of the Library Company; and with this agrees the opinion of Judge Strong, fifth paragraph, part of Exhibit No. 23, page 116, Examiner's report, viz.:

"5. The plan of Dr. Rush was to establish a branch of the Philadelphia Library, not to extinguish it, or to merge its existence in a new institution. It is not, I think, made a condition of the devise to the Company, that they shall not retain their present building or procure some other for the convenience of the members, and for the reception of such books as are intended to be excluded from the branch Library. Of course such other building cannot be placed upon the lot upon which the building for the *branch* shall be erected; nor can the funds derived from Dr. Rush's estate be appropriated for any other purposes than those specified in his will. They can not be used for the purchase or erection of such other building, or for the purchase of such books, or for the current expenses of that part of the Library of the Company."

Subdivision g of the II ground of demurrer, the master thinks unsound.

The will in the fourth clause of the second codicil assumes, that a case may arise for a change of trustees. The law of Pennsylvania always contemplates such a possibility, and there certainly is nothing in the will of Dr. Rush to warrant the conclusion that he wished to interfere with, or control the Library Company, except while they were acting as his trustees, or enjoying his property. If they ceased to be trustees, or to enjoy the property, there is nothing in the conditions required by Dr. Rush which would prevent the Company from again amending its charter in favor of the three learned professions, or in that point which relates to the number of its shares.

In fact the will contemplates the contingency of the Library

Company using the building, though they may refuse or be removed from the trust. In the fourth paragraph of the additional codicil he uses this language: If the Library Company shall in any respect violate, or omit to comply with any of the provisions, &c., therein contained, then I will and direct, that the Pennsylvania Company for Insurance on Lives, &c., shall and may, or if they omit, any Citizen of Philadelphia may apply to the proper Courts of the Commonwealth, to compel the Library Company to comply, or remove them from the trust "and transfer the whole real and personal estate aforesaid, including the Library Buildings, and all the books and furniture belonging to the Ridgway Branch of the Philadelphia Library, unto the said Pennsylvania Company, or if they shall refuse, to some other trust company of the city, who shall take and hold the whole of the said estates, &c., &c., &c.; *permitting, however, if in their sole discretion they shall think proper so to do, but not otherwise,* the said Philadelphia Library Company to occupy the Library Building, and to take charge of the books, &c., of the Ridgway Branch thereof, provided they shall do so under the absolute direction and control of the new trustees, who shall strictly supervise, and entirely control and direct, all the expenditures of my estate in relation thereto, and who may at any time remove them from the said charge, if the Library Company shall not submit and conform to such control and direction."

As to the III. general ground of demurrer, to wit:

"III. The alleged acceptance has been withdrawn. By their "acceptance on the twenty-fifth of May, 1870, of the said Act "of Assembly, the complainants distinctly elected, as they al- "lege, 'not to allow this collection of books to be removed to "the building to be erected by the defendant, if placed on the "proposed site,' and this election, so far as appears from the "averments in their bill, was made in the belief that I was "acting in entire accordance with the directions of the will, for "they aver no knowledge until the receipt of my letter of the

"thirtieth of December, 1870, of my having made any sup-
"posed to be disqualifying promise. The purchase in January,
"1870, of the lot at Locust and Juniper Streets, with a view
"of erecting a library building thereon, in direct opposition to
"the provisions of the will, was also, it is charged, a withdrawal
"of their former acceptance."

The master is of opinion and reports that this ground of demurrer is not sustained.

He finds no evidence that the acceptance has been withdrawn.

The acceptance is argumentatorily said to have been withdrawn, because the plaintiffs elected (page 23 of the bill) on the 25th May, 1870, "not to allow their collection of books to be removed to the building to be erected by the defendant, if placed on the proposed site," they at that date having no knowledge, according to the *averments* of their bill, of the defendant having made the disqualifying promise. The averment, however, is distinctly made in XXIV. section, page 16, of the bill, that the plaintiffs had this knowledge at and before the twenty-ninth day of June, 1869. The argument, therefore, fails.

The purchase in January, 1870, of the lot at Locust and Juniper Streets, with a view to erecting a library thereon, is not necessarily "in direct opposition to the provision of the will, and a withdrawal of their former acceptance, as alleged in this head of demurrer."

Why it is not, is shown in the answer to the II. head of demurrer.

The IV. ground of demurrer, namely, "The complainants are not a charitable corporation, nor within the protection afforded to charities by Courts of Chancery," raises a question intrinsically of great interest, though perhaps not material to this cause in its present shape.

The charter of "The Library Company of Philadelphia," as amended by the Act of 23d February, 1870 (pages 2, 8, 9, of this report, page 145 of the Examiner's report), expressly authorizes

the complainants "to act as trustees for the Ridgway Branch of the Philadelphia Library, and the trusts pertaining thereto, under the last will and codicils of James Rush," "without limitation as to the yearly value or income of said trust estate." The point in question, involving the proper exercise of the preliminary trust reposed in the defendant, comes within the jurisdiction of the Court under one of the ordinary heads of its jurisdiction, viz., the care of trust-moneys and property. This point was earnestly argued by the able counsel of the defendant. The master, therefore, feels it his duty to express his opinion, and it is that this ground of demurrer is not well taken.

It is not necessary to go over the whole law of charitable trusts, and trace the history of the jurisdiction exercised over them by Courts of Equity.

It has come to be admitted that they constituted one of the original subjects of equitable action, and that the statute 43 of Elizabeth regulated and defined, but did not confer the jurisdiction.

Since equity has been established in Pennsylvania, before perhaps, (Witman *vs.* Lex, 17 S. & R., 88) a like jurisdiction has been assumed in her Courts, and the law of charitable uses has undergone a most thorough and learned investigation. Though the statute 43 Elizabeth was never formally adopted or enacted (McGill *vs.* Brown; Sarah Zane's Will, Brightley's Rep, 347; Vidal *vs.* The Mayor; Girard's Will, 2 Howard, 127; Price *vs.* Maxwell, 4 Casey, 23), the course of her legislation has shown that her jurisprudence was at one with that which influenced parliament in the enactment of the 43d of Elizabeth; indeed, that her idea of charitable uses had, if anything, taken a more extended range. The 4th section of the Act 6th April, 1791, authorizes corporations formed for any *literary*, charitable, or religious purpose, to acquire lands, &c., to be disposed of according to the objects for which the corporations were formed, or of the will and intention of the donors (3 Smith's Laws, 31), and the Act of January 6, 1821 (Purd. 145), declares "no disposition of property hereafter made for

any religious, charitable, *literary*, or scientific use, shall fail for want of a trustee, &c."

Institutions which could be classified under either of those heads have been repeatedly held to be charitable institutions, and gifts to their use, or to be administered by them for any of those purposes, charities in the technical language of equity.

The most recent cases are Cresson's Appeal, 6 Casey, 450; The Evangelical Association's Appeal, 11 Casey, 316, and Miller *vs.* Porter, 3 P. F. Smith, 292. Among others, the following legacy was disputed in Cresson's Appeal: "I give and bequeath to the Pennsylvania University, at Philadelphia, the sum of five thousand dollars, to endow a professorship of the fine arts, so that the elements of drawing and sketching from nature may form part of the course of instruction of its alumni." Sustained as a charitable use.

In the Evangelical Association's Appeal, 11 Casey, 316, the bequests were to the "evangelical community or association." No trust was expressed. The association was unincorporated. It was objected that the bequests were void, "because they were made to an unincorporated association, and not upon any defined charity, or for any specified charitable use." The bequest was sustained because "the *purposes* of the organization were all such as the law denominates charitable."

In Miller *vs.* Porter, 3 P. F. Smith, 292, the will of John M. Porter was under consideration. He gave real and personal estate to trustees to found the "Porter University of Tarentum." It was *not* to be a free school. The trustees were expressly prohibited from putting the University under the charge, or administering it for the benefit of, any religious denomination, church, or sect; the persons to be taught were such as "may from time to time be determined on by the said corporation, and as the same may be set forth in their constitution, by-laws, and regulations." It was objected that this was not a charity, because the object was to perpetuate the name of Porter, and because there was no religious element in the trust, and because the tuition was not free. The Supreme Court over-

ruled these objections, using the following words: "You say it was not founded to promote religion or religious education, but to immortalize the founder, and therefore it was not a charity. If the premises be granted, the conclusion does not follow, because, though it has no stamp of religion, and the selfishness of motive may take away from it the high and abstract quality of a Christian charity, yet it was to be a seat of learning, a university, *a centre from which the rays of educated intelligence were to radiate in all directions*, and if to found a school-house at the cross-roads of a township be a legal charity, though the selfish motive be apparent, much more to found such a university is a legal charity, &c., &c." "No matter that it was not to be a free school; it was to bring the opportunities of education nearer home to the people; and he who cheapens popular education, or tempts a larger number into wisdom's ways, is a public benefactor, and what he does is, in the sense of the statute, a charity."

These are the very purposes for which this library was incorporated. The charter recites: "Whereas, Benjamin Franklin (and others) have, at a great expense, purchased a large and valuable collection of useful books, in order to erect a library for the advancement of knowledge and literature in the city of Philadelphia: Now know ye, that we, being truly sensible of the advantage that may accrue to the people of this province by so useful an undertaking, and being willing to encourage the same, have given and granted, &c., that the said Benjamin Franklin, &c."

And the Legislature has considered this Company a proper trustee in a very similar case, see ante pages 11, 13, for an Act of Assembly of March 31, 1792, constituting the Philadelphia Library Company the Trustees of the Loganian Library.

The will of Dr. Rush looks to the time when the Philadelphia Library Company shall receive a large building, and considerable property to be held on a perpetual trust, to increase the means of learning, for he says in his codicil of April 18, 1867: "In short, let the managers think only of the intrinsic value of

the additions to their shelves; for I hope, (yet fearfully), that the streams flowing into the Library will be clear, pure, and deep, diffusing healthy, truthful, and valuable information throughout the community," ante page 35.

This view is supported by the language of Sir John Leach, vice Ch. in the case of The Trustees of the British Museum *vs.* White, 2 Sim. & St., 594.

This was a devise of a freehold estate to trustees to sell and pay the proceeds, together with his residuary personal estate, to the Trustees of the British Museum, to be by them employed for the benefit of that institution.

The devise was in the year 1826, of course subsequent to the Statute 9th Geo., 2 Ch. 36, which declared, that after the 27th of June, 1736, no manors, lands, &c., &c., or moneys for the purchase of such, should be given for any charitable use whatsoever, unless made by deed indented, sealed and delivered twelve calendar months at least, before the death of such donor or grantor." This Statute is not in force in Pennsylvania. Le Lazure *vs.* Hillegas, 7 S. & R., 321. Church *vs.* Remigton, 1 W., 224; Miller *vs.* Lereh, 1 Wall, Jr., 210.

Sir John Leach, V. C., in declaring the devise as to the real estate void, says: I understand that every gift for a public purpose, whether local or general, is within 9 Geo., 2 Ch., 36, although not a charitable use within the common and narrow sense of those words. The gift is to an institution established by the Legislature, for the collection and preservation of objects of science and of art, partly supported at the public expense, and partly from individual liberality, and intended for public improvement, consequently, I must declare this devise void as to the real estate." That is an authority in favor of the complainants on this point.

But the defendant refers to a clause in the first codicil of the will, as taking from this devise and bequest and from the Philadelphia Library Company, their charitable character, using the word probably in its restricted meaning. It is not said that it affects their literary character.

The paragraph referred to is in the second codicil and is in these words:

"The number of shares in the library shall be limited to those actually issued at the time of my death. But the managers, by their by-laws, shall have the authority to allow any respectable person depositing an amount, and paying an annual sum, to be fixed by the Board of Managers, to have the full use of the library, as completely as if they were shareholders."

This, the defendant argues, makes the library a close corporation and devotes the original property, and that intended to be given, to the use of an ascertained number of persons, identified by being the owners of certificates of stock, whereas, he says, indefiniteness as to those who are to be benefited, without any particular person being present to the mind of the testator, is requisite to the legal or equitable view of a charity, and the counsel cite in support of this position, which they have strongly urged, Thompson *vs.* Shakespeare, 1 DeGex, Fisher & Jones, 406; Carne *vs.* Long, 2 DeG., F. & J., 75.

Before reviewing these authorities, it will be well to point out what seems to the Master to be the defect in the argument. There is no change, as the Master views it, produced by the provisions of this codicil in the persons entitled to use the library.

By the original charter the persons enumerated, "and such other persons as shall hereafter be admitted, or become members of the Library Company of Philadelphia, according to the laws and constitution of said company, hereafter to be made," &c., &c., shall be a body corporate.

"Provided, always, That for the increase and preservation of the said library every member of the said company shall and do pay into the hands of the said company's treasurer, for the time being, the sum of ten shillings on the first Monday of May in every year forever," with a provision for forfeiture of interest in case of non-payment.

Then the rules (page 7 ante) provide the terms on which members may take books. The codicil says no new shares, "but the managers, by their by-laws, shall have the authority to allow any respectable person dispositing an amount and paying an annual sum, to be fixed by the Board of Managers, to have the full and free use of the library as completely as if they were shareholders." The managers under the charter admit, at their discretion, new members. The managers under the codicil admit, at their discretion, persons to as complete a use of the library as if shareholders, the effect of the codicil being simply to limit the number of votes for managers, not to limit or restrict the number of those by whom the library is to be used. The number is indefinite and constantly changing, and is to go on forever, embracing a constant succession of objects, thus bringing it within the second of the two ways pointed out by Boyle, in which a testator may evince an intention of treating a bequest as charitable. "He may do this," says Boyle (Law of Charties, p. 37), "either by the use of terms and expressions which leave no doubt on the subject, and this occurs where the fund is sooner or later to be dissipated and lost by its entire distribution; or by directing such an application as would be inconsistent with the notion of a mere legacy, which is the case where the fund is to be of a permanent nature, embracing a constant succession of objects.

See Evangelical Association's Appeal, 11 Casey, 321, 322. The judgment of Judge STRONG. The doctrine there enunciated would make the devises and bequests, under Dr. Rush's will, charitable bequests, even if no trust was declared in favor of the Ridgway branch of the Philadelphia Library.

But to return to the defendant's authorities. Thompson *vs.* Shakespeare, (1 De Gex, Fisher & Jones, 406,) was the case of a will made subsequent to the Act of 9 Geo. 2, c. 36. A section of the will gave to trustees "the sum of 2,500 pounds, to be laid out by them as they shall think fit, with the concurrence of the masters of Shakespeare's house, already sanctioned by me, in forming a museum at the Shakespeare house, in

Stratford, and for such other purposes as my trustees, in their discretion, shall think fit and desirable for the purpose of giving effect to my wishes." The museum was to be of Shakespearean relics. However pleasing such a collection might be to the curious, it had nothing about it in any sense charitable, or literary, or conducive to the benefit of the public. Held not a charity, and therefore not void under the statute 9 Geo. 2. But as it was not for the individual benefit of the trustees, but upon a trust void for uncertainty, the devise failed, the Chancellor saying: "The alleged uncertainty as to the erection of a museum might be got over; but what follows seems to be fatal to the bequest to private individuals, "and for such other purposes, &c., &c."

The Master is of opinion that this case does not support the position of the defendant.

Carne *vs.* Long, 2d De Gex, Fisher & Jones, 75, was a case in which the devise was in these words: "And from and after the decease of my said wife I give and devise all that my freehold mansion house and premises, called the Abbey, situate in Penzance, with the appurtenances thereunto belonging, unto the trustees for the time being of the Penzance Public Library, to hold to them and their successors forever, for the use, benefit, maintenance, and support of said library."

The articles of association contained a provision that whenever the members shall be reduced to ten, all donations shall be returned to the donors, and their representatives who may claim the same, and the remaining books and other articles shall be forthwith sold at public auction, and the proceeds given to some art institution.

Lord Campbell—upon the ground, probably, that this was an association for the mutual benefit of the contributors, and of no other person—held that this was not a charity. He does not say what the ground was. It was said in the case that the Library might not be permanent; that it was possible it might come to an end, and the property be divided. The Philadelphia Library Company has none of these characteristics.

The Library cannot be said to be established for the mutual benefit of the shareholders, and of no other person. It has always been free to be used by any civil person in the rooms, and any person who shall deposit the value of the book with the librarian may take it out as a member may. All sums received from the hire of books and the annual dues of members, are for the expenses of maintenance and the increase of the stock of books. The member has no pecuniary advantage over any other person. He may vote for managers, which the non-shareholder may not. The shareholders now number about 1,100, (p. 159, Ex'r Rep). By no possibility can they ever dissolve the corporation and divide its property. The original charter, towards the end of it (ante page 5) has this provision: "Provided always, that for the increase and preservation of the said Library every member of the said company shall and do pay into the hands of the company's treasurer for the time being the sum of ten shillings on the first Monday of May, in every year, forever; and those who neglect so to do, shall pay such greater sum or sums, in lieu thereof, at such times within twelve months then following, as by the laws of said company shall be appointed; and that, in default of these payments, any delinquent shall forfeit his share in the books and estate of the said company, and be no longer a member." This would be fatal to any project of division. At all events, the trust of Dr. Rush's estate for the Ridgway Branch of the Library is one which cannot come to an end.

The fifth specification of demurrer, the master is of opinion, cannot be supported. It is in these words:

"The interference by the Court in favor of a private corporation, such as the complainants are, will be in prejudice of a great charity for the benefit of the public, which the 'Ridgway Library' will be, if endowed under the provisions of Dr. Rush's will, in the event of the refusal or omission of the complainants to accept the devises in their favor."

The propriety of the interference will depend upon the plain-

tiffs' rights to be presently considered, on the inquiry whether the prayers in his bill can be sustained. It is plain that the testator considered the public charity the same whether administered by the Philadelphia Library Company or by some other trustee. He preferred the former. And if he has given them rights which the Court will protect, or ought to protect, the action of the Court in so doing cannot be "in prejudice of a great charity for the benefit of the public," in any sense which should induce the Court to withhold its action.

The sixth specification of demurrer, is: "The Court has no jurisdiction to control my discretion in the selection of a site for the building, nor in the execution of any of the trusts of the will."

This is as a general proposition true if the discretion exists.

But the point of the plaintiffs' bill is, that after the subject was confided to the discretion of the defendant, and before the time for exercising it arrived, he had incapacitated himself from exercising discretion in the premises. This brings us to consider whether the prayers of the plaintiff's bill can be sustained; if they can, this ground of demurrer fails.

The first prayer of the bill is, "that the rights of your orators and of the defendants in the premises may be ascertained and declared." That, of course, is what to a certain extent must be done in whatever way this cause is disposed of.

The second prayer, viz.: "That it may be declared and decreed that the power conferred on the defendant by the will of the testator was a trust to be administered by him only in the manner in which all trusts can of right, or ought to be administered." The Master believes to be a correct statement of the law.

As the proposed building, when completed, is to be conveyed unto "The Library Company of Philadelphia and their successors" for the uses and purposes of their library, and "The Ridgway Branch of the Philadelphia Library," and

for a "monument," and for "keeping the pictures, &c., of the testator;" [for on a consideration of the whole will and codicils, it is clearly the intention of the testator that it is to be held for all these purposes, notwithstanding the restrictive language of the early part of the will (page 16, ante), that it is to be "for the uses and purposes of their (The Library Company of Philadelphia) library, and for no other use or purpose whatever," and notwithstanding in the first paragraph of the additional codicil he calls the Philadelphia Library Company the "heir to his estate,"] provided, always, they accept the same on the terms and codditions in the will and codicils contained. The interest of the complainants in their double capacity of trustees and *cestui que trusts*, is contingent on the site and building being such as they can accept. In the meantime their interest is one which entitles them to the aid of this Court to prevent an illegal or inequitable exercise of the power of selection to their detriment. The will of Dr. Rush speaks from his death as to all its provisions, and is incapable of being varied by parol testimony, unless a latent ambiguity is discovered. The will gives a lot to be selected at the discretion of the defendant. From the moment of the testator's death the complainants had an interest in the nature of property in the *bona-fide* exercise of that discretion; and, of course, a right to the interposition of this Court to protect that interest from any illegal or inequitable interference or abridgment.

The expression used in the additional or second codicil, "I authorize and allow my executor, under a broad and thoughtful foresight, to increase the size of the lot, and select any situation he may deem expedient," while in one sense conferring a discretionary power, in another, imposes a duty as coupled with that power, which the donee of the power cannot refuse to perform, which makes him a trustee, and the power a trust, so that if not executed by him the court will execute it.

Lord ELDON, in the well considered case of Brown *vs.* Higgs, 8 Vesey, 574, thus states the law: "The principle of all these

cases is that if the power is a power which it is the *duty* of the party to execute, made his duty by the requisition of the will, put upon him as such by the testator, who has given him an interest extensive enough to enable him to discharge it, he is a trustee for the exercise of the power, and not as having a discretion whether he will exercise it or not; and the court adopts the principle as to trusts, and will not permit his negligence, accident or other circumstances to disappoint the interests of those for whose benefit he is called upon to execute it. "Stated in a note to this case, in Sumner's Edition of Vesey's Reports, to have been approved in the House of Lords in 1813. The draftsman of the will and codicils seems to have been aware of this distinction towards the close of the fourth paragraph of the additional codicil (ante page 34); he confers a discretionary power of a kind which no court could interfere with—and in much stronger words than are used when speaking of the selection of the site.

In the case before us, the devise is to the trustee, among other things, to exercise this discretion, that is to select the lot and build upon it. The interest of the *cestui trust*, or the right of the new trustee, *i. e.*, the Library Company, to assume the trust after the completion of the building, would not fail if Mr. Williams should die before making the selection, nor would it go to the substituted executors, Messrs. Craven or Biddle, but would be executed by the court.

The will, therefore, creates an interest in the plaintiffs which this court will protect, and the discretion allowed the donee of the power is so inseparable from the duty to select and build, as to make the defendant to all intents subject as to both to the law applicable to trusts. If the trustee, donee of the power named in the will, should refuse to execute the trust, or die, the court would, if necessary, appoint a new trustee, or in some other manner carry out the intentions of the testator. They would not be allowed to fail because of the inability or refusal to act of the trustee named in the instrument. Burroughs *vs.* Philcox, 59 My. & Cr., 92; Brown *vs.* Higgs, 4 Ves., 708; 8 Ves., 574.

Where the discretion lodged with the trustee has relation to some ministerial act, it is much more under the control of the court, than where it depends upon the exercise of opinion or personal judgment, such for instance, as when the consent or approbation of a trustee is required to a marriage, or to the conduct of an individual. Milsington *vs.* Mulgrave, 3 Mad., 491; Mortimore *vs.* Watts, 14 Beav., 616. Suppose the promise had been to build at Manayunk, Frankford, or Germantown; would the complainants have been bound?

Applying these principles to the IV. prayer for relief which is in these words: "That the court may decree that the defendant, being at and before the time when the said trust vested in him, or supposing himself to be under an obligation which bound his discretion as to the selection of a site for the said building, was and is thereby disqualified from, and incapable of exercising the power and trust in that behalf given to him by the said will, and that the same may be exercised by this court having jurisdiction in the premises."

We have to inquire, first, as to the fact of the alleged disqualifying obligation; 2d. Whether it does disqualify; and, 3d. If it does, how is the testator's intention to be reached or carried out.

The evidence of the alleged disqualifying obligation is found in the answer, and is asserted by Mr. Williams in his letter to Dr. Charles Willing, printed (page 18 of bill) as exhibit B to the answer; and also on page 44 ante of this report; and in paragraph 14, page 19, of the answer where the defendant says: "I admit that I wrote to Dr. Willing, on December 30th, 1870, the letter from which an extract has been given. Its statements are true."

The conversation mentioned in this letter took place about eight days before Dr. Rush's death. See ante page 36.

It thus appears that at the time of Dr. Rush's death the defendant was under a pledge, given under circumstances

which rendered it "*as sacred as an oath,*" to put the building on a particular site.

Did that disqualify him from exercising the discretion which the testator had confided to him, and to the exercise of which the complainants were entitled by the terms of the will?

It is a difficult, and, in some senses, a delicate question.

For, while the master sees clearly that it may be answered in the affirmative without casting the slightest imputation on the defendant's integrity and good faith, which are above suspicion, it may be difficult for the defendant so to regard it.

The discretion which the complainants were entitled to, was the free, voluntary, untrammelled judgment on the question of site of a gentleman long a member of the Library Company, familiar with its wants and wishes. No single individual could have been named upon whose spontaneous opinion as to site the complainants would probably have been more willing to rely. But it was *that* they were entitled to, and nothing less. That was Dr. Rush's will. The will spoke from May 26th, 1869, the day of Dr. Rush's death. Potts *vs.* Britton, Eq. cases, Law Reps. 11, page 438. There was no latent ambiguity. Parol evidence could not be admitted to change it. There had been no revocation;—there had been no alteration by Dr. Rush. Consequently his will stood as it was written when the last codicil was executed. To give effect to Dr. Rush's parol wishes *as* his wishes, declared a few days before his death, would be to alter his will contrary to the statute of wills. The keeping of the promise to Dr. Rush is not what the plaintiffs are entitled to. That promise was upon Mr. Williams with all the solemnity of an oath, when the duty of exercising an untrammelled discretion was cast on him by the will. Had he at that date any discretion to exercise? He says he had. It is a question, perhaps, on which he is incompetent to judge. In passing upon it, the character and person of the present defendant must be put out of view. Was his discretion free in the view of a court of equity? Cases somewhat analagous will, perhaps, afford us a clue to the answer.

One who has a private interest, or who has been counsel in a cause, by common consent is disqualified, if promoted to the bench, from sitting as a judge at the trial or hearing of the cause. A juror would be incapacitated if he had promised either of the parties to find for him. Such a situation as is presented in this case is as disqualifying to a man of Mr. Williams' character as the more coarse and vulgar one of a pecuniary consideration would be to a lower order of men.

The precise question raised in this case has not, so far as the master is aware, been adjudicated; but there are a few cases in the English equity books in which principles are discussed and applied in a way which shows how such a case would be treated in those tribunals.

In re Beloved Wilkes Charity, VII. Eng. Law & Eq., 73, S. C. 3 M'Noughton & Gordon, 440. In 1722, certain freehold estates were devised to the ministers of Puckle-church, Doynton and Dirham, in trust as to part of the rents, "to and for the maintenance, education, schooling, qualifying for, putting to, and keeping at Oxford of a lad, in order to make him a minister of the Church of England, which said lad his said trustees should choose of the said parishes of Wick and Abson, Puckle-church, Doynton, or Dirham, and of such parents who were not of ability to give him such maintenance and education as aforesaid, and that they should not choose one of their own sons; and when and so soon as such person should have taken the degree of Bachelor of Arts, then or before, if the income thereby appointed for that purpose would admit thereof, his said trustees should choose and elect such another lad as aforesaid, and maintain, educate, fit him for, put him to, and keep him at Oxford till he should have taken the degree of Bachelor of Arts as aforesaid, and so on in like manner forever."

It had been settled by the Court that the lad to be educated should come from one of the four parishes named, if any such lad could be found in either of those parishes whom the trustees, for the time being, should think eligible; but if not, then

to be chosen by the trustees from any other parish of England or Wales, but the specified parishes to be preferred.

In 1848 the Rev. Wm. S. Robinson was rector of Dirham, the Rev. T. B. Coney, vicar of Puckle-church, and the Rev. L. B. Clutterback, rector of Doynton. On the 22d of February, 1848, one E. Gale, an inhabitant of Doynton, wrote and sent a letter of that date to the Rev. W. S. Robinson:

"Rev. Sir:—I should feel obliged by your informing me if the donation bequeathed by the late Mr. Beloved Wilkes for the education of a lad belonging to either of the four parishes named in the aforesaid will, is applicable for the purpose of educating my son. If it should be applicable for him, I should thank you for your interest in electing him to receive the benefit thereof. E. GALE."

Mr. Gale received this reply:

"The Rev. Mr. Robinson informs Mr. Gale that he will take care to lay his letter before the trustees of the Wilkes Charity at their annual meeting; but, speaking individually, Mr. R.'s opinion is, that Mr. Gale's son will not be eligible. Dirham Rectory, March 14, 1848."

On the 13th of June Mr. Robinson wrote again to Mr. Gale, referring to his former note, saying that Mr. Gale's note had been laid before the trustees and considered by them, and concluding: "I am directed by them (*i. e.* the trustees) to inform you that the funds of Wilkes Charity are not at present applicable for the education of your son."

Mr. Gale subsequently discovered that on the said 13th of June a lad named Charles Joyce was elected, and that he was not a native of or resident in any of the four parishes named in the testator's will.

After some correspondence between Solicitors, a petition was filed by E. Gale and four other residents of the four parishes, setting forth the above facts and many others having relation to the petitioner's son and the person appointed. The petition con-

cluded: "That E. Gale was a farmer, and the said W. Gale was a fit and eligible object for the said testator's bounty, but that, as the petitioners believed, the said trustees considered they had an arbitrary power of selection, and that the sons of farmers and agriculturalists were not desirable persons to be educated for the ministry of the church; and although the petitioners did not impute any corrupt motives to the said trustees, yet they submitted that the trustees had misconceived their duties, and had acted in the matter set forth contrary to the instructions of the founder," and prayed that the election of Joyce might be declared void.

The trustees filed a counter affidavit, in which they said that on three former occasions non-residents had been appointed—that they were all well acquainted with the people of their respective parishes, and some of them with the Gales—that on the day of the election they had all been together, and had given most serious consideration to the cases of the two applicants, "and that in the full and free and fair and *bona fide* exercise and discharge of the discretion and duty given to and reposed in us, in and for the purpose of the execution of the charity, and without favor or affection, or caprice, or ill feeling towards, or with respect to, any individual, *or any class or grade of persons whatever*, we unanimously considered the said C. Joyce the proper object for the benefit of such charity-trust, and elected him accordingly." On the 9th February, 1850, Lord CRANWORTH, Vice Chancellor of England, made an order declaring that the election of Joyce was, under the circumstances, improper and a breach of trust, and that W. Gale was eligible, that a new election should be held, and that the Trustees should pay the costs.

An appeal was taken to this order and argued before Lord Chancellor Truro, who, after an elaborate judgment, reversed the order, each party paying their own costs. The ground of reversal was, that there was no evidence of any other than a *bona fide* exercise of their discretion by the trustees. It is evident from the judgment of the Chancellor, that if it had been

shown that the Trustees had laid down a rule that the sons of farmers were not persons in a situation of life fit to be the objects of the charity, he would have sustained the order, notwithstanding the plenary discretion given them by the will.

"I have looked," says Lord Truro, "with considerable diligence to see if I could discover any foundation for the idea, that the Trustees ever had laid down any such rule, and I am quite unable to discover how the idea could have arisen;" and again, "I see no ground whatever for supposing that the Trustees were acting upon any aristocratic rule, or any rule so absurd, as, that a person—the founder devising property, for the benefit of the inhabitants of an agricultural district—intended that the sons of farmers in that district, sons of persons incompetent to mantain them, should not be eligible as the objects of this charity." Page 81.

The existence of an intent on the part of the appointor, as evidenced by the communication to the appointee after the appointment had been made, of a purpose inconsistent with the power, was held sufficient to vitiate the appointment, though the appointee had not before the appointment been privy to the arrangement. Marsden's Trust, 4 Drewry, 600.

Topham *vs.* The Duke of Portland, 5 Ch. App. Cases, Law Rep. 40.

A settlor by deed declared that trustees should hold certain funds after his death upon trust for his daughters Harriet and Mary, or one of them, as his son should appoint, and in default of appointment should pay the dividends to H. and M. in equal shares during their joint lives, with remainder over. At the time when the settlement was made, the settlor objected to the proposed marriage of M., and made the settlement in order that in the event of the marriage, the income should be appointed as to one-half for H., and as to the other half to be dealt with according to circumstances. After the death of the settlor M. married, and the son thereupon appointed the income of the whole fund to H. for her life reserving a power of revocation. H. was not informed that the appointment had been made, and it was shown that the intention of the son and of

H. was to accumulate one moiety of the income and hold it in suspense. In a suit instituted by M. this appointment was declared void as a fraud on the power.

The son then executed a second deed of appointment, appointing the income to H. during the joint lives of herself and M. absolutely. H. was informed that this appointment had been made, and she and the appointor deposed that there was no agreement between them as to the disposition of the income. Under the circumstances, Lord Chancellor Hatherley, affirming the decree of V. C. James, held the second deed of appointment void. The Chancellor said, "I think a valid appointment might have been made to her (H.) of that fund; but the real point for consideration is, whether or not, though now conscious of her strict right at law to dispose of the fund, the pressure of a moral obligation not to appropriate more than one-half of it to her own use, and to hold the other half subject to the Duke's intentions and for his purposes did not, at the date of the last appointment, and does not now, weigh on her mind with such force as to convert her into a more passive instrument of the Duke's intentions, and whether such her sense of moral obligation is not well known to the Duke."

"I think upon the whole case that the Vice Chancellor has come to a right conclusion, and that the appeals must be dismissed with costs. Sir G. M. Giffard L. J., concurred.

The Duke, was the Duke of Portland, and son of the settlor, and donee of the power he had been examined as a witness in the cause and had stated that his object was to carry out his father's wishes, and he was "a dummy" in the late Duke's hands.

The principle of these cases, it seems to the Master, is applicable to the case in Court. Mr. Williams avows his intention to carry out the testator's wishes and directions, but denies being a passive instrument, but asserts that in the selection of this site he exercises an untrammelled discretion, which, happily for him, enables him to carry out the testator's instructions, and his counsel insist that this statement being in the answer,

and in response to the bill, must be taken to be the fact, unless overthrown by two witnesses, or one witness and sufficient circumstances.

The Master is of opinion that this is not a case for the application of that principle of equity evidence.

It is impossible for any man, however cool and unimpassioned he may be, to know exactly how far his judgment would be influenced by a promise so solemnly given as that given by the respondent in this case.

The language of C. J. Marshall, in the case of Clark *vs.* Van Reimsdyk, 9 Cranch, 153, applies: That careful and accurate Judge says: "That either two witnesses, or one witness, with probable circumstances, will be required to outweigh an answer asserting a fact responsive to a bill, is admmitted. But certainly there may be evidence arising from circumstances stronger than the testimony of any single witness. The weight of an answer must also form the nature of evidence depend in some degree on the fact stated. If the defendant assert a fact which is not and cannot be within his knowledge, the nature of his testimony cannot be changed by the positiveness of his assertion. Thus, when the executors say that Clark never gave Monroe authority to take up money or draw bills; when they assert that Reimsdyk, who was in Batavia, did not take this bill on the credit of the owners of the Patterson, but on the sole credit of Benj. Monroe, they assert facts which cannot be within their own knowledge. These traits in the character of testimony must be perceived by the Court, and must be allowed their due weight whether the evidence be given in the form of an answer or a deposition."

The Master is discussing the abstract legal question disclosed by the pleadings, and has no intention to intimate any opinion as to the question whether the lot in question is the best for the purpose or not.

We come, then, to the third question, how is the will to be carried out.

The answer is, that the court will either, through a new trustee (if that step is necessary) to be appointed by them, or by a decree framed after a report from a master, carry out the intention of the donor if it can be ascertained. In this case the prevailing intention which manifests itself all through the will and codicils is that The Philadelphia Library Company shall, if they wish, become possessed of the building (which the testator has made it the duty of the immediate devisee in trust, to erect) to be by them held in trust, to be used for their own books, for books to be acquired from funds provided by his estate, for a monument to his wife and her father, &c.; And even if they refuse the trust, the testator declares that it will be in accordance with his wishes to allow them to use the building as a place for keeping their own books, and, at the same time, that they may be permitted to act as custodians of the books belonging to the Ridgway Branch, &c.; (will, ante page 34). The manner of building is pointed out in the will, the only point left uncertain being the site.

The court can enter into all matters in relation to those things that are beneficial to the estate, and into the motives of the trustees for exercising or refusing to exercise their powers; and courts will not allow the trustees to exercise their powers in this respect in an arbitrary or capricious manner. Webb *vs.* Shaftesbury, 7 Ves., 480; Attorney Gen'l *vs.* Clark, 1 Beav., 467; De Manville *vs.* Crompton, 1 V. and B., 359. If the court has acquired jurisdiction of the case by bill or decree, the trustees must act under the sanction of the court in appointing new trustees, making investments, sales, leases, and in varying securities, Webb *vs.* the Earl of Shaftesbury, and the Earl of Shaftesbury *vs.* Arrowsmith, 7 Ves., 480, unless the instrument of trust declares that their discretion is to be uncontrolled. Mislington *vs.* Mulgrave, 3 Mad., 493, Lee *vs.* Young, 2 Y. & C., Ch. Ca. 536. The Supreme Court of Massachusetts, in Saltonstall *vs.* Saunders, 11 Allen, 456, in pronouncing their decree, say, "If at any time hereafter doubts should arise as to the mode of distribution or *the trustees should exercise their discretion illegally*

or unreasonably, this court, upon bill or information, may control and regulate the administration of the charity," and see Pulpress *vs.* The Church, 12 Wright, 204; De Peyster *vs.* Clendinning, 8 Page, 296; Fontain *vs.* Ravend, 17 How., 369, relied upon by defendant, is not opposed to this.

The defendant, in his answer, page 15, meets this by saying:—

"I deny the averments in the third section of said paragraph. I am advised, and therefore aver, that the complainants are not a charitable corporation, and that the discretion given me to select a site for the library company is not therefore in the nature of a trust for them; but that if the law and the facts are as stated in the bill, then as the will speaks as of the day of the testator's death, if, in his lifetime, by his own act, he disqualified me from the exercise of the discretion given to me by the will, the bequest to the Library Company being dependent upon the exercise of that discretion as a condition precedent to the vesting of the estate, no Court of Chancery can dispense with the performance of that condition.

"I am advised, and therefore aver, that my disqualification to exercise my discretion, supposing it to exist, having arisen from acts of the testator himself, the complainants can take no benefits under his will conditioned upon a prior exercise of my discretion, however ready they may be to comply with all the 'other conditions and regulations.'"

The master is of opinion that this argument is fallacious. The testator did nothing to disqualify the executor; he could impose no duty upon him. The disqualifying promise was the act of the executor. The selection of the lot was an incident merely of the testator's main intent, which was that a building should be erected suitable for a library building, and for a memorial or monument. The duty imposed upon the defendant was to erect a building, conformably to the plan described by the testator, and tender it to the Library Company. The testator had not made up his mind on what site, but that he must select some site was a necessary incident to the duty imposed upon the trustee.

Supposing there to be no difficulty about the site, could the trustee have said the erection of a building is a condition precedent to the vesting of the estate, and because I promised the testator in his life that I would not erect the building, I refuse to do so? The devise in trust to the library therefore fails. I think not. The Court would compel the trustee to act. To say that anything which was said by Dr. Rush to his trustee and executor could change his will would be pro hac vice to repeal the statute of wills. The testator did nothing to disqualify the executor and trustee named in his will.

The conclusions then to which the Master has come upon the questions submitted are that the will was not affected by the promise; that the trustee, by his promise, has so crippled his discretion as to make it impossible to say how much his preference for the lot in question is due to his unbiased opinion that it is the most expedient for the purpose, and how much to his promise to Dr. Rush; that his action in the premises must therefore be under the direction of the Court.

That the complainants have an interest in the selection of the fittest site, which gives them a standing in a Court of Equity to ask that the selection be made under the supervision of the Court; that this course is not to be viewed as an expression of opinion adverse to the site proposed by the executor; that it be referred to a Master to inquire and report to the Court whether the proposed site is a proper and expedient location for the said building, and if not, what would be such a site? and that the defendant be restrained by injunction from proceeding to erect the said building on the said lot on the southeast corner of Broad and Christian Streets until further order. Of course the last specification of demurrer fails with the rest.

The master submits a form of decree drown in conformity with the above report.

Respectfully submitted by

P. PEMBERTON MORRIS,

Master.

LIBRARY CO.
vs.
WILLIAMS.
} *Decree.*

And now, this day of A. D. 1872, this cause came on to be heard upon bill, answer, replication and proofs, and was argued by counsel; Whereupon, in consideration thereof, the Court are of opinion and so declare, First, that the complainants are competent to, and of right may, when the proper time shall arrive, assume the trust confided to them by the will of the testator, Dr. James Rush; Secondly, that all the powers to that end conferred on the defendant by the will of the said testator are trusts, in which the complainants have an interest in the nature of property, and which are to be administered by the defendant only in the manner in which all trusts can, or of right ought to be administered; And it appearing to the court, as well by the written admissions of the defendant as by his answer and testimony in this cause, that at and before the time when the said trust vested in him, he had absolutely bound the discretion intended to be given to him by the said will as to the selection of a site for the building proposed by the testator to be erected, and was and is thereby disqualified from, and incapable of exercising the power and trust in that behalf given to him by the said will, and that, in order to carry out the true intent and meaning thereof, the said trust may, and should be now exercised under the super-

vision of this Court according to the course and practice of chancery;—it is, therefore, ordered and decreed that it be referred to Esq., as master, to inquire and report what would be the most expedient situation for the said building, to the end that the true intent and purpose of the testator, as contained in his will, may be carried into full effect; And that he have authority to take testimony in addition to that taken before the examiner; And that the defendant be restrained, until further order, from proceeding to erect the said building on the lot situate at the southeast corner of Broad and Christian Streets; And the Court reserves all questions of costs and expenses for its further consideration.

LIBRARY COMPANY
vs.
WILLIAMS.

The Master gave the required notice that his report was ready, and would be filed on the 4th November, 1872.

The request and exceptions annexed have been filed with him by the respective parties.

He has given them and the matters to which they relate careful examination and consideration.

So far as relates to the statement on page 52 of his report, to which his attention has been called by complainants' counsel, he thinks the effect of the evidence is best stated by omitting the words, "probably had gone before reading," from page 52.

As to the exceptions filed by defendants' counsel, the Master sees no reason to change the conclusions arrived at by reason of anything contained in them.

On careful re-reading of the bill he thinks the tenth exception is possibly well taken, and that the time referred to in the XXIV. paragraph of the bill may be the 10th December, 1870, and not the 29th June, 1869, as he has reported. Either is prior to the receipt of the letter of Dec. 30, 1870. It does not, however, change his opinion that the third ground of demurrer is not well taken.

P. PEMBERTON MORRIS,
Master.

November 4th, 1872.

Complainants' counsel desire the Master to reconsider that part of his report on page 52, in which he states :

"The Master is of the opinion, from the evidence, that Mr. Williams did not hear the report read, probably had gone before reading," it being, as they conceive, not supported, but contradicted by the testimony as per the annexed statement thereof.

RAWLE,
McMURTRIE,
for Complainants.

STATEMENT.

Page 193, a. Minutes of meeting of June 3, 1869. Exhibit 42. "Present, Messrs. Williams," &c.

Page 226. Testimony of Lloyd P. Smith. Recollects remarks made by Mr. Williams after report had been read.

Page 228. Testimony of Peter McCall. "Reading of report was one of the earliest things done at meeting."

Page 230. Testimony of Henry Wharton. "Mr. Williams, who was quite deaf, had his hand up to his ear, listening to the report."

Page 103 i, June 10, 1869. Report of Committee recommending propriety of taking opinion of counsel not connected with Board.

Page 235, June 11, 1869. Letter from Mr. Williams to Mr. McCall. "*After* the meeting of the Board in the afternoon, it appeared not impossible that some legal proceedings would be instituted."

Page 235. In evening after report was read, Mr. Williams retained Judge Strong.

See

Examiner's Report p 52

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As to a Report made to
Library Co: Board
June 10th 1869
See Mr McMurtrie's statement
page 203
Exhibit (42) page 193 b
and
Mr Williams' testimony
page 204
& afterwards " 218!
Whitman, Secy pp 224-5
Especially foot of p 225
Report not handed
to the Secy)
See also
Lloyd P. Smith p 226
" 228
Mr McCale " 229
H. Wharton " & 230
& 231

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DEFENDANT'S EXCEPTIONS.

1. The Master has erred in reporting, on page 52, that in the letter of 30 Dec'r, 1870, from Mr. Williams to Dr. Willing, "he expresses the determination to build on the lot at Broad "and Christian Streets, and 'nowhere else,' according to his "promise given to Dr. Rush;" for the letter expresses no determination to build there "according to his promise." It only argues that he (Mr. Williams) ought not *voluntarily* to violate such a promise, in opposition to his own deliberate judgment that the site he had selected was best, merely to gratify the wishes of shareholders who had refused to express their gratitude for the gift they had accepted.

2. The Master has erred in reporting, on page 57, as untenable, the first reason assigned for respondent's demurrer.

3. The Master has erred in reporting, as untenable, the second reason, with supporting arguments, assigned for respondent's demurrer.

4. The Master has erred in reporting, on page 58, that "complainants have done what they could" so far as their doings concern the performance of their duty towards the estate of Dr. Rush.

5. The Master has erred in reporting, on page 59, that the Act of 23 Feb'y, 1870, is such an act as was contemplated by the testator.

6. The Master has erred in reporting, on page 59, that there is nothing in Dr. Rush's will, which makes inconsistent with the trust, the provisions of the Act of Assembly declaring that their (complainants) own property shall remain "under their entire and exclusive control and disposition."

7. The Master has erred in reporting, on page 61, as unsound, subdivision *g* of 2d ground of demurrer.

8. The Master has erred in reporting, on page 62, that the 3d ground of demurrer is not sustained.

9. The Master has erred in reporting, on page 63, that there is no evidence that the acceptance by the complainants of Dr. Rush's bequest has been withdrawn.

10. The Master has erred, on page 63, in reporting the contents of Complainants' Bill. There is **no** such averment, in XXIV section, page 16, as he reports, viz.: that complainants had knowledge of an alleged-to-be disqualifying promise, "at and before the twenty-ninth day of June, 1869." The time referred to in said section is the 10 December, 1870.

11. The Master has erred in reporting that the complainants are a charitable corporation.

12. The Master has erred, on page 71, in reporting that the "5th specification of demurrer cannot be supported."

13. The Master has erred, on page 74, in reporting that "if Mr. Williams should die before making the selection" of a site, the right to make such selection would not "go to the substituted Executors, Messrs Craven or Biddle, but would be executed by the Court."

14. The Master has erred, on page 76, in reporting that "the discretion which the complainants were entitled to, was "the free, voluntary, untrammelled judgment of the Executor "on the question of site, as of the day of Dr. Rush's death."

Though a will does for some purposes speak from the day of the death of the testator, no such rule is applicable to a question of an executor's discretion.

15. The Master has twice erred, metaphysically, viz.: on page 76, in conjecturing that respondent was inadequate to judge whether he had any discretion to exercise; and again, on page 82, in asserting:—

"It is impossible for any man, however cool and unimpas-
"sioned he may be, to know exactly how far his judgment would
"be influenced by a promise so solemnly given as that given by
"the respondent in this case."

16. The Master has erred in his answer, on page 83, to the self-put question: "How is the will to be carried out?" If the respondent is really disqualified, the selection must be by Alexander Biddle and Thomas Craven, and not by "a new "Trustee to be appointed by the Court, nor by a decree formed "after a report from a master."

17. The Master has erred, on pages 75 and 85, in finding two facts which are irreconcilable, viz.: that the testator exacted from respondent an obligation which "did disqualify him from "exercising the discretion which the testator had confided to "him;" and that "the testator did nothing to disqualify the "executor and trustee."

18. The Master has erred in reporting that "the trustee by "his promise has so crippled his discretion, as to make it im-
"possible to say how much his preference for the lot in question
"is due to his unbiased opinion that it is the most expedient for
"the purpose, and how much to his promise to Dr. Rush."

19. The Master has erred in reporting that the respondent's "action in the premises must be under the direction of the "Court."

20. The Master has erred in reporting that complainants have any interest which "gives them a standing in a Court of "Equity to ask that the selection be made under the supervision "of the Court."

21. The Master has erred in reporting in favor of a reference "to a master, to inquire and report to the Court whether the "proposed site is a proper and expedient location for said "building, and if not, what would be such a site."

22. The Master has erred in reporting that defendant shall be restrained by "injunction from proceeding to erect the said "building on the said lot, on the southeast corner of Broad and "Christian Streets, until further order."

JOHN G. JOHNSON,
GEORGE JUNKIN,
GEORGE W. WOODWARD,
Solicitors for Respondent.

, JANUARY 3, 1873.

preme Court of Pennsylv'a

AT NISI PRIUS—IN EQUITY.

HILADELPHIA LIBRARY COMPANY v. HENRY J. WILLIAMS, Executor and Trustee.

testator bequeathed his estate in trust to select and purchase a lot of ground, and thereon to erect a building sufficiently large to accommodate and contain all the books of the Library Company of Philadelphia; and in further trust to convey said lot and building to the said company for the uses and purposes of their library, subject to the restrictions and conditions named in his will. By a codicil he authorized and allowed his execu or "under a broad and thoughtful foresight, to increase the size of the lot, and *select any situation he may deem most expedient*, without regard to any provision of his will or codicils." In the lifetime of the testator, and after said codicil had been made, the executor promised him that he would erect the building upon a lot of ground at Broad and Christian streets, Philadelphia, which had been previously purchased by the testator. Upon a bill filed to restrain the executor from proceeding to erect said building upon the lot at Broad and Christian, upon the ground, principally, that his promise to the testator had influenced his judgment and prevented the exercise of the sound discretion required in the selection of said lot, the court referred the matter to a master to report the law, the facts and a decree proper to be made therein. Upon exceptions to his report, *the court held*:

The purchase of the lot by the testator, after the execution of his will, with the express object of erecting the library building located thereon, was not an ademption *pro tanto* of the bequest, and the executor must rely upon the will alone as it stands, for his authority to act in the matter.

The executor being authorized by the will to select any lot which commended itself to his own free, unbiassed judgment as most suitable, if he acted in good faith and if no improper influences were acting upon his mind and warping his judgment, equity will not interfere with the exercise of that discretion.

The facts, in the opinion of the court, showing that his judgment was biassed by the promise given to the testator in his lifetime, the court will interfere to prevent the selection of a lot by the executor, contrary to the "broad and thoughtful foresight" required of him by said will.

Exceptions to report of master dismissed.

Opinion by MERCUR, J. Delivered December 31st, 1872.

This case comes before me upon exceptions to the report of a master. He was directed to report the law, the facts, and a decree proper to be made therein. Twenty-two exceptions have been filed to his report. The very able arguments of counsel, however, have not been directed to each exception separately, but rather to the discussion of two questions, which may be stated to be covered by these, to

First. What powers were vested in the defendant under the trust created by the will of Dr. James Rush in regard to the location and purpose of the library building?

Secondly. Has he properly executed those powers in selecting the lot at Broad and Christian streets as the site for said library building?

The first question can be more satisfactorily answered by referring at some length to different portions of the will.

The testator, by his will of the 26th of February, 1860, devised and bequeathed the whole of his real and personal estate to his brother-in-law, Henry J. Williams, his heirs and assigns, in trust, to pay certain legacies, annuities, gifts, and bequests, to be thereafter expressed in codicils, and then to hold the residue and remainder of his estate "in trust, to select and purchase a lot of ground, not less than one hundred and fifty feet square, situate between Fourth and Fifteenth and Spruce and Race streets, in the City of Philadelphia, and thereon to erect a fireproof building, sufficiently large to accommodate and contain all the books of the Library Company of Philadelphia." And upon the further trust, "so soon as this building is completed and ready for occupation, then in trust to convey the same, with the lot of ground whereon it is erected, unto 'The Library Company of Philadelphia' aforesaid, and their successors, for the uses and purposes of their library, and for no other use or purpose whatever." Providing, however, before such conveyance should be made to the said Library Company, they should, either by an alteration in their charter or in some other way satisfactory to his executor, bind themselves and their successors to conform to, and comply with, certain express conditions therein specified. One of the conditions was "that all the accounts of the receipts and expenditures from the estates aforesaid, real and personal, shall be kept separate and distinct from all other accounts of the said Library Company, and shall all be headed and kept as the accounts of 'The Ridgway Branch of the Library Company of Philadelphia.'"

He also appointed said Williams executor of said will.

r a "first codicil" thereto, dated the of May, 1866, he imposed additional rictions upon said Library Company, designated the beneficiaries of the leges, annuities and gifts indicated in his inal will.

In his "additional codicil" of the 18th April, 1867, he says, "I authorize and w my executor, under a broad and oughtful foresight, to increase the size the lot and select any situation he may em most expedient, without regard to y provision of my will or codicils."

On the 18th of January, 1869, Doctor sh purchased by contract a lot at Broad l Christian streets, in the City of Philelphia for the avowed purpose of havg the library building erected thereon, d made a payment of $1,000 upon the ntract. He held this lot subject to the yment of the residue of the purchase

ney at the time of his death. That occred upon the 26th of May, 1869. The fendant has selected this lot as the site the library building. Had he the wer in equity so to do? He says he ; that the will left it to his sole judgnt and discretion, and not to the judgnt and discretion of anybody else; and he exercise of that judgment and distion he has made the selection. Superded to the power given him in the will points to the purchase of this identical by the testator, after the execution of will, with the express object of having library building located thereon, and ims that was an ademption *pro tanto*.

I, however, am of the opinion that the trine of ademption or double portion not be applied to the facts in this case. e defendant must fall back upon the ll, and rely upon that alone, for his auity. By that instrument he was auized to select any lot which comnded itself to his own free, unbiassed gment as most suitable. If no improper influences were operating upon his nd and warping his judgment in the exerse of his discretion, and he acted in good th, a court of equity will not interfere th that discretion. Hill on Trustees, ; Goehenauer v. Froelich, 8 Watts, 19; ew v. Chew, 4 Casey, 17; Pulpress et al. M. E. Church, 12 Wright, 204. discretionary powers like other auities must be exercised in the manner scribed by the trust instrument. Hill Trustees, 488.

To the defendant was given by this instrument, the power to select any lot which, "under a broad and thoughtful foresight" commended itself to his judgment. The selection must be made under and by the exercise of the defendant's judgment, entirely free from any obligations imposed upon it by the testator other than those contained in the will and codicils. Such a discretion the defendant must bring to the discharge of his trust, and then it only marks the limits of the power given to him. The exercise of such a discretion the claimants have a right to demand. They can require no more, and may not submit to any less.

Secondly. Did the defendant properly use his own discretion, and execute the power intrusted to him in the selection of the lot in question? The complainants aver that this site will be prejudicial to the interests of the library, utterly destructive of the trusts which they have hitherto administered, and which they claim it was the manifest design of the testator to promote. They further allege that the defendant assumed the trust under such a trammelled and crippled discretion, that he was thereby disabled from using his natural, unbiassed judgment in the selection of the lot. The master concurred in this, and in his very able report

has found "that the trustee, by his promise to the testator, had so crippled his discretion as to make it impossible to say how much his preference for the lot in question is due to his unbiassed opinion that it is most expedient for the purpose, and how much to his promise to Dr. Rush," and that the action of the defendant should be subject to the control of the court.

This presents the controlling question in the case. Do the facts and the law justify the master in his conclusions?

The evidence shows that some weeks before the death of the testator he became very anxious to have the location of the intended library building fixed and settled; and he desired the defendant to ascertain the size and cost of all the vacant lots on Broad street (upon which street he desired it to be placed). The defendant procured statements of the sizes and prices of all he thought suitable, from Vine to South street; but Doctor Rush was not satisfied with any of them. Some other gentlemen brought him a plan of the lot on Christian

…et, and he was so much pleased with it …t he directed the defendant to buy it at …e. The defendant did so, by the afore… …l contract of May 18th, 1869. The …ctor thereupon expressed great plea… …e that it was concluded, as it relieved …s mind from all anxiety. "Some days …er," says the defendant (in his letter … the 30th December, 1870, to Doctor …arles Willing, chairman of a committee …pointed by the complainants), "the …ctor recurred again to this subject, as … had probably occurred to him that he …d given me an absolute discretion as to …e situation of the library by the terms … his will, and that I might be induced to …errule his decision after he was gone. …e called me to his bedside and asked me … give him a promise that I would build …e library on that lot, and nowhere else. … gave him this promise as fully and …lemnly as language could express it, …d he then thanked me, and said he …uld now die in peace."

In his testimony taken before the ex…iner on the 17th of April, 1872, he …s:—"I think it was about the second …y after the interview with Mr. Wharton …hich he had just stated was on the 20th …21st of May, 1869), when I was seated … Doctor Rush's bedside. I think the … had been the subject of conversation …tween us, when the Doctor turned to … and said, 'Harry, now you will promise … to put the building upon that lot?' I …id, 'Certainly, Doctor, if you desire it; …ill promise you that I will put it there, …d nowhere else.' The Doctor merely …pressed his satisfaction. I think he …id, as near as I can recollect, 'Well, I … very glad of it; it is now all settled.'" The Doctor died within five or six days …reafter. This promise, then, was de…anded and given a very few days …ior to his death. It was two years after …e last codicil to his will had been exe…uted. It was demanded of a brother-in-…w to whom he was about to intrust more …han a million of dollars—I say about to …trust, for there was yet time for him to …evoke the will and all of its trusts. He …as unwilling to pass all his vast estate …nto the hands of the defendant upon the …mplied assurance that the library build…ng would be located upon the lot which …he had purchased for its site. Hence he … made the specific demand. What his …action would have been, had the defend…ant's answer not been in accord with his …judgment, is left to conjecture. He suf…fered his will to remain unchanged. He passed from this earth, there is every reason to believe, in an abiding faith that he had restrained the free choice of the defendant, and that he had secured the erection of the library building upon the lot designated by himself.

What was the position of the defendant? He knew that he had been named in the testator's will as his trustee and executor. Sitting by the bedside of his dying friend and brother—recognizing the Doctor's right to control his own property—wishing to relieve his mind from all doubt upon the subject that troubled him, the defendant then and there promised, as fully and as solemnly as language could express it, to put the building on that lot and nowhere else. Do not all the attendant and surrounding circumstances impress the mind of every conscientious and reflecting person with the very strong moral obligation thereby imposed upon the defendant? I can scarcely conceive one stronger. The greater the integrity, the higher the moral sense, the stronger would be the obligation upon the conscience. That the defendant possesses both in a high degree is manifest in his letter of the 30th December before referred to. When asked, in behalf of the claimants, to reconsider his intention of building on said lot, and locate the building elsewhere, his answer was such as did credit alike to his conscience and to his heart. After repeating the promise which he had made, and the circumstances under which it was made, he says:—"Now, do you think it would be at all consistent with truth and honesty for me voluntarily to violate a pledge given under circumstances which render it as sacred as an oath, and made to a dying man who had confided to me the whole of his estate? Would you, with your well-known delicacy and sensibility to all honorable engagements, feel yourself justified in doing so were the case your own, and should I not lose your respect and regard (which I value very highly) were I to hesitate for a moment as to what was my duty?"

Therein and thereby he proves the indelible stamp made upon his mind. Conscience, resting under an obligation strong as an oath, bound him to the observance of his promise. With that deep recognition of moral obligation resting upon his conscience, he assumed the duties of the trust. He thinks he executed the power and discharged the trust under the written will alone, wholly uninfluenced by his promise.

well known integrity and high moral

er of the defendant do not permit doubt that he honestly thinks so. ever, he be correct, there must have time when his conscience was ab- from this deep moral obligation—a hen he threw it off, and when the one took exclusive possession of his ent. I understand the answer to be was at the time he was obligated the usual oath in order to assume ties of executor. This was on the May, 1869. This latter oath, he reated a legal as well as a moral tion. Did it, however, wholly eradi- e moral obligation, "sacred as an under which he had rested up to ime? In his letter of 30th Decem. 870, he refers to it as still resting ly upon him, and that his duty re. him to be influenced thereby.

contended, however, inasmuch as endant has sworn in his answer, and before the examiner, that he has ed and decided the question as to e of the library building entirely tive of and uninfluenced by any made by him to Dr. Rush, that the inants have failed to make a case h a court of equity will interfere e discretion which he has exercised. onsidering the act which the de- has committed, or is about to , we must look at the position of nor, the donee, and of the beneficia- the power. The beneficiaries have ht to require the power to be ex- according to the terms of the writ- trument creating it. If the donor the donee to accept the trust pledge that he would execute it e than was provided in the instru- committed, in equity, a fraud upon er. If the donee accepted it under edge and so executed it, he com- a fraud upon the power. It is not rily a moral fraud. A wilful de- from the terms of the power is a pon it, without regard to whether ive thereto was good or bad. Top- the Duke of Portland, 1 De Gex. Smith, 571. Nor does it change of law in regard to the agreement rt the trust from the original pur- which the power was intended, that influence be exerted before intment or after it, provided that

in both cases it secures the consent of the appointee to fulfil the wishes of the appointer. Topham v. Portland, 31 Beavan's Reports, 539–540.

No American authority has been found which covers the case under consideration, but in Topham v. The Duke of Portland, reported in 5 Chan. Appeal Cases, 40, it is held that although the donor and the donee both swore that the power was not executed to carry out any agreement between them, other than those specified in the written instrument, yet that a chancellor might look beyond the oaths and see whether the presence of a moral obligation did not at the date of the appointment, and when the trustee came to act, weigh upon her mind with such force as to make her a passive instrument of the donor's intentions.

A judge or juror is forbidden to sit in a case wherein a party litigant is closely related to him by blood or marriage. He will not be permitted to purge himself of his disqualification by answering that he can, and will, act wholly uninfluenced by such relationship.

Certain facts, which the wisdom of ages has recognized as influencing the judgment of mankind generally, create a conclusion of law that they will influence the judgment of each individual.

Applying the law and reasons to this case, testing the uncontradicted evidence by all those principles which I have ever been taught to believe influence the human mind, and control the actions of men, it does establish such a state of facts as would naturally and reasonably restrain and trammel the free judgment of the donee of a power. Such a general presumption cannot be removed by the honest opinion of a donee that in his particular case he is not influenced thereby. Hence I am unable to conclude that the defendant had, when he made the selection of the lot in question, or has now, such a free discretion and unbiassed judgment as the complainants are entitled to invoke and a court of equity bound to provide. It should therefore be referred to a master to inquire and report what will be the most expedient location for said library building, without my indicating any opinion as to whether or not the lot at Broad and Christian streets is a suitable one.

The exceptions to the report are dismissed, the report of the master is confirmed, and decree accordingly.

James T. Biddle Esqr
With best respects
John G. Johnson

HENRY J. WILLIAMS, Appellant,
vs.
THE LIBRARY COMPANY OF PHILADELPHIA, Appellees.

Supreme Court
Of January Term,
1873. No.

APPEAL FROM SUPREME COURT AT NISI PRIUS.

PAPER-BOOK OF APPELLANT AND DEFENDANT BELOW.

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JOHN G. JOHNSON,
GEORGE JUNKIN,
GEO. W. WOODWARD,
for Appellant.

COLLINS, PRINTER.

I. *Copy of Docket Entries.*

JULY TERM, 1873.

Wm. Henry Rawle, R. C. McMurtrie, Wm. M. Meredith.	THE LIBRARY COMPANY	Bill in Equity
	OF PHILADELPHIA	
J. G. Johnson, Geo. W. Woodward, May 13, 1871.	*v.*	filed
Geo. Junkin, Sept. 20, 1871.	HENRY J. WILLIAMS, ESQ.	April 11, 1871.

May 22, 1871. Rule entered on defendant to plead answer or demur within thirty days, *sec. reg.*

July 6, 1871. Answer filed.

September 20, 1871. Rule entered on plaintiffs to reply or demur in thirty days, or decree *pro confesso.*

October 24, 1871. The plaintiff joins issue on the matters alleged in the answer.

And now, this 13th day of November, 1871, the court do appoint Richard S. Hunter, Esq., Examiner, to take and report testimony under the issues of fact raised in the above. *Per. Cur.* (order filed in E. D. Nov. 14, 1871).

June 22, 1872. Examiner's report filed.

And now, June 22, 1872, on motion of Messrs. Rawle and McMurtrie for complainants, the court appoint P. Pemberton Morris, Esq., as Master in the above case to report the

law, the facts, and a decree proper to be made thereon, *per cur.*

Nov. 9, 1872. Master's report with exceptions filed.

December 3, 4, 5, and 6, 1872. Argued, C. A. V.

December 31, 1872. The exceptions to the report of the Master are dismissed; the report of the Master confirmed, and decree accordingly.

Opinion by Mercur, J., filed.

January 3, 1873. Per order of defendant's counsel in writing filed, the above case is certified from the Court of Nisi Prius to the Supreme Court in banc.

II. *Abstract of Bill and Answer.*

This is partly given by the Master in his report, on pages 53, 54, 55, and 56. Some points there omitted are supplied in the following history of the case.

III. *History of the Case.*

Dr. James Rush, of the city of Philadelphia, died on the 26th day of May, 1869, seized and possessed of valuable real and personal property, inventoried and appraised at $1,110,717.

He disposed of this by his last will and codicils.(a) By the will dated 26th February, 1860, he devised and bequeathed his whole estate to his executor, Henry J. Williams, in trust, after distributing some articles of trifling value, and after paying certain annuities—aggregating about $8100—"to select and purchase a lot of ground not "less than one hundred and fifty feet square, situate be- "tween Fourth and Fifteenth and Spruce and Race Streets, "in the city of Philadelphia, and thereon to erect a fire- "proof building sufficiently large to accommodate and con- "tain all the books of the Library Company of Philadel-

(a) Page 15 of Master's Report.

"phia (whose library is now at the corner of Fifth and "Library Streets), and to provide for its future extension "according to plans, directions, and specifications which "I shall hereafter make or give; but if I should not make "or leave any such plans, directions, or specifications, "then to erect the same according to his best judgment "and to the views which I have expressed to him. It is "my wish that this building should be exceedingly sub- "stantial, completely fire-proof, without any large, lofty "or merely ornamental halls or lecture-rooms; the whole "interior to be divided in such a way as to contain the "greatest number of books, to be well lighted, and so ar- "ranged as to be of easy and convenient access.

"And upon this further trust, so soon as this build- "ing is completed and ready for occupation, then in trust "to convey the same, with the lot of ground whereon it is "erected, unto "The Library Company of Philadelphia" "aforesaid, and their successors, for the uses and purposes "of their library, and for no other use or purpose whatever. "*Provided*, however, that before any such conveyance shall "be made to the said Library Company, they shall, either "by an alteration in their charter, or in some other way "satisfactory to my executor, bind themselves and their "successors to conform to and comply with the following "express conditions, and any others I may hereafter im- "pose, under which they are to hold the said property and "all other bequests and devises herein or hereafter given "to them."

These conditions will be found in the will and codicils.(*b*) By a codicil, dated 18 April, 1867, he further provided:—

"I have in my will limited the extent of the lot to be "purchased for the library building, as well as its locality; "but as I desire that it shall have not only strength, dura- "bility, and accommodation, but also be of sufficient mag- "nitude for any future or contingent, but not an ambitious

(*b*) Pages 2, 3, and 4 of Answer.

"or competing, increase of the library; in order to prevent, "if possible, its being torn down in twenty years, and the "lot sold at a speculative profit to suit the hyperbole of the "times, I authorize and allow my executor, under a broad "and thoughtful foresight, to increase the size of the lot, "and select any situation he may deem most expedient, "without regard to any provision of my will or codicils."

By his first codicil he announced his desire that this building should be erected as a monument to his wife and her father.

"One of my objects in giving my residuary estate for "the use of the said Library Company was to express "my respect and regard for my father-in-law, the late "Jacob Ridgway, and my affection for and gratitude to his "daughter Phœbe Anne Rush, by erecting to their mem- "ories a monument which I hope will prove more du- "rable than any other grateful record I could make, and "be infinitely more useful in the community. As it was "from them I derived the greater part of my property, "which (under the special and prudent management of "faithful and trustworthy agents) has enabled me to devote "happily, and undisturbed, the latter part of my life to "pursuits of scientific inquiry, which I have designed to "be more beneficial than the more common enjoyment of "an ample fortune, it is both just and proper that I should "thus employ it, the more especially as Mrs. Rush had led "me to believe that if she had survived me, she would "have applied it to a similar purpose. Now, in order to "carry out this intention in a public and permanent form, "I direct my executor to have a marble slab, with the fol- "lowing inscription, on a plain ground, with a border of "simple moulding, without any surrounding ornaments, "placed and maintained on some appropriate part of one of "the interior rooms of the new library building, in which "my private library and other personal effects are to be pre- "served,

THE RIDGWAY BRANCH
OF THE
PHILADELPHIA LIBRARY.
A MONUMENT TO THE MEMORY OF
JACOB RIDGWAY
AND OF HIS DAUGHTER
MRS. PHŒBE ANNE RUSH."

He also provided, as he hoped, against unseemly litigation, by the following clause:—

"And I further will and direct that if any of the devi-
"sees or legatees or annuitants herein named shall attempt,
"themselves, or aid, assist, or encourage others to question,
"dispute, litigate, or object to the validity or effect of any
"part or portion of my will, or any codicil thereto, or of
"any gift or devise therein mentioned, then, and in that
"case, all the clauses in my said will or any codicil thereto
"conferring any benefit upon the person or persons afore-
"said shall stand and be revoked and annulled, and the
"same shall be paid and given over to the said Library
"Company."

From his relatives, whose natural claims were ignored, no word of complaint has ever been heard in the courts. All opposition has originated in the "House of his Friends."

Mr. Williams was the companion of Dr. Rush during the last days of his existence; had been his intimate friend for nearly half a century; was his kinsman and professional adviser, and possessed his entire confidence.

The Library Company of Philadelphia are a private corporation. If they decline to accept Dr. Rush's bequest, it will go to the erection and endowment of a PUBLIC LIBRARY.

They own a magnificent collection of rare and valuable books, aggregating upwards of 95,000 volumes. For

nearly twenty years, they had been using the most strenuous endeavors, by private and public appeals, to procure sufficient funds for the erection of a commodious, fire-proof building, for their safe-keeping. Though these appeals resulted in contributions to the extent of $16,722, and though the will of Joseph Fisher put them in the possession of an additional sum, they had never been able to gratify their ardent and long-cherished wish nor to quiet their anxious fears of the flames which might devour all their treasures before the collection of the needed residue—some $200,000 or $300,000.

Dr. Rush, who shared the pride of all Philadelphians in this literary treasure, determined to devote his large fortune to the erection of the building required for its preservation. In the truthful and well-chosen words of the bill:—(c)

"It is clear that the testator expected and designed that "the building he directed his executor to put up would be "used, if the Library Company were willing to accept the "conditions imposed upon them, *as a place of deposit of* "*their own books*, as well as those purchased with the "funds provided by him."

From the outset, Dr. Rush was anxious that a large lot should be procured, for in 1860 he directed that the one to be selected by Mr. Williams should be *not less than one hundred and fifty feet square.* As years rolled on, when he found that the building he contemplated would require a larger lot than he had at first supposed, and as he became more and more impressed with the necessity of procuring one of such dimensions as would allow of the extension that future growth might require, he became uneasy lest the dimensions originally mentioned would be insufficient, and therefore, in 1867, he authorized an *increase* in the size of the lot. The character of the building he has

(c) Bill, page 10.

suggested to his Executor, will require a lot with a front of at least 220 feet.(*d*)

The proper site for the building occupied his thoughts for many years. Even in his will, adequacy of dimension appears to be his chief anxiety—an anxiety that increased, as the Codicils show, with reflection. Centrality of location, unattainable without an outlay of some $350,000, though of course desirable, was incompatible with the gratification of this wish.

In his lifetime he directed his Executor, and Mr. Thomas Craven—the gentleman named in his will as Mr. Williams' successor—to make inquiries for a lot. They divided their duties, and Mr. Williams confined himself as nearly as possible within the limits originally named. The prices asked for lots within those limits, of sufficient size, were so extravagant that he could find none suitable. Mr. Craven, however, found one on Broad Street, 300 feet front and 540 feet deep, bounded by Broad, Thirteenth, Carpenter, and Christian Streets, purchasable for $130,000. Dr. Rush and Mr. Williams agreed as to its suitability, and it was immediately bought by the former, through the agency of the latter, for the purpose of locating thereon the Library building.

During the time that Mr. Williams was pursuing these inquiries, he was also acting with Mr. Henry Wharton and Colonel Alexander Biddle, as a committee of the Library Company, appointed "to make inquiry in regard to the purchase of a lot for the erection of a fire-proof building," at a special meeting of the Directors, who were "authorized to purchase a lot in the city of Philadelphia, on the best terms they can procure."(*e*) This committee had sufficient

(*d*) Answer, page 7.
(*e*) Examiner's Report, pages 111 and 112.

authority to bind the Company by an actual purchase.(*f*) These gentlemen, though most earnest in their efforts, were unsuccessful at that time in obtaining a lot of adequate dimensions, at a reasonable price. Mr. Wharton favored the purchase, at a high price, of a small lot on a side street —Locust Street—but Mr. Williams opposed it.

After purchasing the lot, Dr. Rush was desirous to ascertain, through Mr. Williams, whether the Library Company would accept it as the site of their building. He authorized him to communicate his testamentary intentions to those gentlemen who, as the committee appointed to select a site, were in a position to speak understandingly, and, we think, authoritatively. Mr. Williams(*g*) says:—I "desired Colonel Biddle to accompany me to Mr. Wharton's "office, and then stated to them that Dr. Rush had given "almost his whole fortune, amounting to a million of dol- "lars, to build a library at Broad and Christian Streets, and "asked them if they thought the Library Company would "object to that location. They declared that, considering "the magnificence of the gift, the Library Company ought "not, and they believed would not, make any objection to "his wishes as to its position. Dr. Rush, to whom I imme- "diately returned, was informed of the result of the inter- "view, was greatly pleased, and having obtained the views "of three members of the board, appeared entirely satisfied."

Mr. Wharton, though differing slightly in his recollection of this conversation, understanding, as he says, "that Mr. Williams spoke of Dr. Rush's intention to make this endowment in *prospective words*. * * * I may have mistaken Mr. Williams' words, but that was my understanding of them, and upon that, it is my distinct recollection, that in what was subsequently said by me I acted," admits:—

(*f*) "I then went to Mr. Gummey and said, that, subject to Mr. Williams' approval, we would purchase the lot." Mr. Wharton's testimony. Examiner's Report, page 20.

(*g*) Answer, page 5.

"Mr. Williams then asked me whether in my opinion "the Directors ought not to recommend the stockholders "to accept the gift of the lot under such circumstances. I "do not recollect that Mr. Williams mentioned any condi- "tions or qualifications about the endowment; indeed, I "am sure he did not. I then said that I did not think that "we, as a Committee of the Board, could bind the Board, "but that it was my individual opinion under these circum- "stances that the stockholders ought to accept rather than "the city of Philadelphia should lose so munificent a gift. "Mr. Williams then said that Dr. Rush had desired to get "the opinion of Directors on the point, but as that could "not then be done, he requested him to speak to the other "members of the Committee on Building."

Complainants admit that it has not been proven that the site is a bad one. The Master so reports, and the learned Judge at Nisi Prius so announces.

The Committee which represented the views of the majority of the stockholders at the meeting of the 21st October, 1869, reported:—

"The Committee did not enter into the consideration "whether the proposed site, situated as it is on the finest "avenue of Philadelphia, might not at an early future be "surrounded with the finest public and private structures, "and thus become most eligible."(*h*)

The selection is approved by the gentlemen—Messrs. Biddle and Craven—named as Mr. Williams's successors, in case of his death or resignation.

The objection to it, stated in the bill,(*i*) is that it "is not "*less than half a mile* south of the usual places of resort "of nearly all the stockholders," and that by reason of this immense distance, many of them will forfeit their shares of a stock which, after the announcement of the provisions of the will and of the intended site for the new building, sold in the market at an advance of about fifty

(*h*) Examiner's Report, page 137. (*i*) Bill, page 14.

per cent. If these apprehensions be well founded, the consequences cannot be *very* disastrous, for in place of the annual receipts from this source, which do not exceed $4981, an increase of some $24,000 in the annual income may be reasonably expected as the result of an acceptance of the provisions of the will.

No better site has ever been suggested, possessing the dimensions designated in the will, procurable at less than twice the cost of this lot.

In Mr. Wharton's cross-examination (*i*[1]) we find evidence that no one on behalf of complainants has been able to combine the conditions of reasonable price with adequacy of size and centrality of location.

"You are an active Director of the Library Company?
"I have been, and am."
"You have given the matter of location of the new Library "building great thought for years?"
"Yes, for several years; for a year or more before authority "was given to the Directors to purchase the lot."
"Will you now name one or more lots having more than two "of their sides 150 feet long, which in your opinion would be "suitable as a site for the erection of that building."
"I CANNOT, as the subject has been dismissed from my mind "as one of inquiry, for a considerable time."

A more expensive location would render impossible of execution the Testator's plans for a building, as is conclusively shown by the complainants' own arithmetic.(*j*) They allege that this building must cost $700,000, and that, allowing only $130,000 for the cost of the lot, there is but $689,515, with which to erect it.

One other objection, viz., that nothing is left for the purchase of books and library expenses—faintly whispered in the bill—is sought to be relieved by the prayer for a declaration by the Court(*k*) as to "how much of the *corpus* "of the estate shall or ought to be expended and employed "in the purchase of a convenient lot of ground and the

(*i*[1]) Examiner's Report, page 38.
(*j*) Bill, page 25. (*k*) Bill, page 27.

"erection of a suitable building thereon." Though such a declaration would be in direct subversion of all the provisions of the will, it *might* give the desired relief.

Upon the decease of Dr. Rush, Mr. Williams consulted his then counsel, Judge Strong, as to his duties under the will. Since then, he has "taken no important step without "first obtaining the advice and approbation of counsel."(*l*) He was thoroughly impressed with the extent of the obligation imposed upon him by his oath of office as executor, and was advised that he must exercise his own judgment in the selection of a lot for the purposes of the library.(*m*)

Under this advice, with full knowledge of his duty, and with an honest intention to perform it, he selected the lot at Broad and Christian Streets as the site for the building. This action, and the reasons therefor, repeated in his testimony,(*n*) are stated in the answer,(*o*) as follows:--

I was advised by my counsel in writing on the 9th of July, 1869:—

"As executor you are guided by the written will. In the exercise of the discretion reposed in you by that instrument, you may regard Dr. Rush's views and wishes orally expressed, but, after all, *your* judgment, however it may be made up, must be your guide in matters left to your discretion."

In pursuance of this advice—for I have felt, and still feel, under the obligation of my oath of office, bound to perform my duty in accordance with the *law*—I considered, in all its bearings, without any bias, the matter of the site, but my conviction that it was the one by far the most expedient remained, and still remains, unchanged.

Though protesting that the complainants have no concern with or control over my reasons for this decision so long as they are honest, which is not, I believe, denied, yet, in deference to the Court, I will state some of those which influenced me at the outset, and govern me still.

The lot I have selected is bounded by Broad and Thirteenth, Christian and Carpenter Streets. It has a front on

(*l*) Answer, page 4. (*m*) Answer, page 6.
(*n*) Examiner's Report, pages 216-217.
(*o*) Answer, pages 7, 8, 9, and 10.

Broad Street of 299 feet 5 inches; a depth along Carpenter and Christian Streets of 527 feet, and contains about $3\frac{1}{2}$ acres. It cost about $132,000. It was Dr. Rush's desire that I should erect a building upon a general plan which he described to me. It was to be of the Greek Doric order—to consist of a centre building with two wings—the former to have eight, and each of the latter four, columns in front. The details were left entirely to me. This plan, the architect, Mr. A. Hutton, tells me, will require, according to the drafts prepared by him and approved by me, a front of at least 220 feet. All efforts in other libraries to give sufficient light from the roof alone having signally failed, as I have learned from personal examination and correspondence, an additional space of 50 or 60 feet will be required to give side lights, so that a lot of from 260 to 275 feet is absolutely necessary, in my judgment, for the building I am required to construct.

The testator's "cardinal intent" was, that a building should be erected by me sufficiently large to accommodate for all time the books of the Philadelphia Library, such as would be an ornament to the city, and a lasting monument to his wife and her father. Broad Street, in my opinion, is infinitely preferable as a site for such a building, because of the handsome private and public structures already upon it, and of the probability of many more being erected there in the future; because of its length and centrality, and of its great width, which furnishes an opportunity for architectural display that our narrow streets fail to afford. In this preference my testator shared. A location of the library upon any other street in the city would be decidedly against my judgment.

From Vine to South Street it is almost entirely improved with buildings too costly to be paid for and then torn down. A prominent real estate agent whom I requested to obtain the prices of lots on this street, has furnished me a list of all the unimproved properties of any magnitude which he ascertained to be for sale, and the prices asked. By this it appears, that lots north of Vine Street from 150 to 200 feet in depth are held at about $500 per foot, those between Race and Arch from 180 to 260 feet in depth at from $900 to $1000 per foot, and those south of Locust Street of a depth of 130 feet at about $750 per foot; that the Asylum for the Deaf and Dumb at Pine Street, recommended as admirably suited for the library by some hostile to the site selected by me, which is but little more than one-third of a mile below, with a depth less by 130 feet than the latter, and a front of but 200 feet, is held at $275,000. All these lots, with the exception of the last, are quite narrow.

I am informed that the lot owned by the Pennsylvania Railroad, having a front on Market Street of about 250 feet,

and a depth on Thirteenth and Juniper Streets of about 353 feet, is held at from $300,000 to $350,000, and that for lots on Broad Street north of the Monument Cemetery with a depth of about 330 feet, $425 per foot have been offered and refused.

The lot on Locust Street, recently purchased by the complainants, containing one-sixth the area of the selected lot, cost, as I am informed and believe, $67,000.

I hope, under the estimates which have been furnished me, to finish the building with all its equipments, for $650,000; but I will not depend upon a smaller expenditure than $700,000. Though not admitting their correctness, saving for the purpose of the argument, I will accept the figures given by the complainants in the 25th page of their bill, by which it will appear, that if I expend, as I would be compelled, an additional amount of $140,000 in the purchase of a different site, I would have but $550,000 left, and if required to set apart for their use, as they seem to demand, an additional sum of $200,000 I could erect no fitting monument to the testator's wife and her father, and no building in accordance with my views or those which Dr. Rush has expressed to me. Neither the Company nor the Court can interfere with me in the selection of a site without cramping me in the matter of the building, over which I have a control that I believe has not been questioned.

The site which I have selected is within easy reach of all parts of the city. South of it is an immense population which is annually increasing, and, in the opinion of many—an opinion in which I join—this portion of Broad Street will ultimately be filled with magnificent residences. The facilities afforded by passenger railways are such, that to those north of it who may wish to use the library, a ride of a few squares additional will make no difference in cost and but little in time. The cars of the Tenth and Eleventh Streets line run within two squares, those of the Twelfth Street within one square, and those of the Thirteenth and Fifteenth Streets and Union lines along or around the lot. The latter also carry passengers without extra charge to the Navy Yard, Twenty-third Street, Fairmount, Richmond, and Kensington. It is equidistant with Buttonwood Street—in all less than four-fifths of a mile—from the street which is the very centre of the city, Chestnut Street, and below which a very large number of stockholders reside. It is nearer to Broad and Walnut Streets than is the present library building. It is but 930 yards south of the lot on Locust Street which complainants have recently bought, and distant from it, by car, five minutes, and by rapid walking, six minutes. The city through which the 900 stockholders are scattered is sixty miles in circumference.

The great size of this lot will always protect the library from the noise and bustle of the more crowded portions of the city,

and from all danger from fires or nuisances in its neighborhood.

Many of the libraries and museums of Europe are further removed than it is from the residences of those who use them. In this country, wherever the plan of building in the centre of population has been followed, it has been found in a few years, from its shifting so frequently, that they have become so disadvantageously located as to make removal a matter of constantly recurring agitation. The Astor Library in New York, a comparatively modern institution, is now many miles distant from the mass of the reading public, and the Boston Public Library has been compelled to establish a branch quite distant from the original location, from which an entire removal is proposed.

I have chosen this site for these, among other reasons:—

1. It is on the finest street of our city.
2. It is, so far as I know, the only lot on that street sufficiently large for the building I must erect, which I can obtain at a reasonable cost.
3. If compelled to purchase a lot elsewhere, I will not be able to erect the building ordered by the testator.
4. I know of no suitable lot on any other street which can be had at the same cost.
5. It is but little distant from the centre of the city, and is within easy reach, by car, of all portions of it.
6. It will not be necessary to have the library building torn down in twenty years, aud the lot sold because of its limited dimensions (Codicil, p. 25).
7. Its size insures for all time light, air, retirement, quiet, and safety from external dangers.
8. It already belongs to the estate.
9. It is exactly suited for the kind of library Dr. Rush proposed to endow—not a reading-room, nor one containing the light and ephemeral literature of the day, but one for readers and students of a higher grade.
10. It will carry out the cardinal intent of the testator as *he* understood it, because it is the one he selected himself.

The design of the present Bill is best shown (*p*) in the following prayers:—

"That it be referred to a Master, to inquire and report "what would be a proper and fit location for the said buil- "ding, to the end that the true intent and purpose of the "testator, as contained in his will, may be carried into full "effect."

(*p*) Bill, page 27.

"That the Court may from time to time give such fur-
"ther instructions, and make such further orders and de-
"crees in the administration of the trust, as to them shall
"seem fit; and especially that it may declare how much
"of the *corpus* of the estate shall or ought to be expended
"and employed in the purchase of a convenient lot of
"ground and the erection of a suitable building thereon."

"That the defendant may be restrained by injunction,
"preliminary until the hearing and perpetual thereafter,
"from proceeding to erect the said building on the said lot
"situate on the south-east corner of Broad and Christian
"Streets."

The assigned reason for demanding this extraordinary interference is, that after most anxious and careful inquiries for a suitable site had been made; after the merits and demerits of all available had been exhaustively discussed; after Mr. Williams had approved of the purchase of a lot for the purpose intended; after it had been bought and partly paid for by Dr. Rush; after the committee of the Library Company to select a site, with the knowledge that their opinion had been sought by Dr. Rush and was to be communicated to him, had said that they thought there would be no objection on the part of the intended beneficiaries, Mr. Williams promised the testator that he "would build the Library on that lot and nowhere else."

At the time this promise was given, Mr. Williams believed the lot in question was the best that could be procured. He so swears in his Answer (*q*) and in his testimony, (*r*) and he is confirmed by Mr. Wharton, who testifies, (*s*) that, *prior to the promise*, Mr. Williams told him, "*That there was a lot at the corner of Broad and Christian Streets suitable for the purposes of the Library.*"

It is admitted that Mr. Williams, since his appointment as executor, has striven to the very best of his ability to

(*q*) Answer, page 11.
(*r*) Examiner's Report, page 208.
(*s*) Examiner's Report, pages 21 and 33.

exercise his judgment, independently of his promise, in the selection of a lot, and that he believes he has done so. The learned Judge who heard the cause says: "He thinks "he exercised the power and discharged the trust under "the written will alone, wholly uninfluenced by his prom- "ise. The well known integrity and high moral character "of the defendant do not permit me to doubt that he him- "self thinks so." It is contended, by the Master, however:—

"It is impossible for any man, however cool and unim- "passsioned he may be, to know exactly how far his judg- "ment would be influenced by a promise so solemnly given "as that given by the respondent."

No one asserts that Mr. Williams has been actuated by improper motives, or that he has wasted or mismanaged the estate intrusted to him. A decree has been made, not that he be enjoined from building on the lot he has chosen, and that he shall select another, but that he be deprived of all right of selection, in favor of a Master, to be appointed by the court.

The Library Company, at whose instance this decree has been obtained, though possessing no legal right to accept anything under the will until after the completion of the building, ought to have shown that during the four years which have elapsed they have done every thing in their power to manifest their ultimate intention to do this frankly and without reservation; but, so far as they have acted at all, they have manifested an intention not to accept, unless the selection of a lot, the erection of a building, and the setting apart of a reserve fund shall all be in consonance with their views.

The non-acceptance of the bequest would render necessary a very great change in the building and plans to be adopted by Mr. Williams. He therefore desired an early expression of their views and opinions, that he might pro-

perly shape his course. Knowing that his days were numbered and that delay might prove fatal to the performance of his duty, he asked for this. Five months elapsed before he received it, and though it was then decided by a majority of 5 out of 597 votes to accept, it was also decided by a majority of 25, that no acknowledgment of appreciation should be expressed, for the confidence reposed in the company by Dr. Rush.(*t*) Threats were made of an appeal to the courts because of alleged improprieties in casting votes,(*u*) which allegations were not without foundation, for it was admitted by Mr. Smith, the librarian of the Company, that he voted one proxy for, which he had been instructed to vote against, acceptance.(*v*)

A course was subsequently adopted which had been disapproved of at the preliminary meeting. It was determined that the Company would accept the bequest of Dr. Rush, but that they would quietly evade its obligations, by erecting a building of their own in which they would put some or all of their books, and that as to such books and other property their entire and complete control should be reserved without regard to conditions.

There is no doubt that Dr. Rush designed the building, for whose erection he so munificently provided, as a receptacle for the Library books. This is admitted by the complainants.(*w*) Their directors long ago reported:—(*x*)

"We incline to the opinion that the spirit of the will "requires that the books belonging to the Philadelphia "Library Company should be removed to the new build-"ing; and that the testator did not contemplate the ex-"istence of several library buildings, in different parts of "the city, in which the books of the library might be "distributed at the discretion of the Company. It is not "inconsistent with this view that the testator designates

(*t*) Examiner's Report, page 140.
(*u*) Examiner's Report, p. 27.
(*v*) Examiner's Report, page 19.
(*w*) Bill, page 10.
(*x*) Examiner's Report, page 193*c*.

"the building to be erected and all his property devised and "bequeathed for the use of the Philadelphia Library, and "the books purchased with the proceeds thereof, as 'The "Ridgway Branch of the Philadelphia Library.'"

At the stockholders' meeting a resolution had been presented in these words:—

"No. 5. *Resolved*, That the acceptance of the stockholders "of the Library Company of Philadelphia, is upon the express provision that so much of the present collection of "books and other property of the Company as may by the "Directors be deemed expedient, shall be retained in the "present or some other central position for general use and "circulation."

The committee of stockholders whose main recommendations were then indorsed by the majority, counseled the rejection of this resolution, because, as they alleged—

"If adopted, it *amounts to a rejection of the legacy*, and "was, it seems, so intended."

Subsequently, and before the filing of the bill, the complainants purchased a lot on Locust Street, for the erection of a library building, and, when they applied for such legislation as was necessary under Dr. Rush's will, they refused to accept any which would oblige them to use his library building as a place of deposit for their own books. The act of Assembly which was framed by them and passed at their instance, expressly enacts that their acceptance shall be "in such manner that *the real and personal property of* "*the Company*, *including such books*, pictures, statues, and "other works of literature and art as now are, or hereafter "shall be, held by them in their own right, or in any other "of [or] different trusts, *shall be in no wise affected thereby*, "*but shall remain and be under their own entire and exclusive* "*control and disposition*."

The evidence as to the promise, on which the bill is

based, is to be found in the letter from Mr. Williams to Dr. Willing, bearing date 30th Dec., 1870.(*y*)

It was written under these circumstances. Mr. Williams had selected the site in accordance with his own judgment. He had so announced, repeatedly. Whenever questioned, he had asserted, most decidedly, that in his opinion, it was the best for the purpose. The Library Company were fully aware of all this, and of the fact of Dr. Rush's desire for the erection of the building thereon. No one had ever suggested a better, feasible site. The Company, as we have seen, despite their first vote, had reconsidered their original resolution, and had decided upon a course in direct violation of the testator's design and intention as understood by themselves.

After all this, and after the whole matter had been exhausted and exhaustingly discussed, without suggesting any reasons why his own judgment should be set aside and that of the Directors should be substituted, Mr. Williams was advised by them, on the 12th Dec., 1870—nearly nineteen months after Dr. Rush's decease—of the passage of the following preamble and resolutions:—

"*Whereas*, At a meeting of the members of the Library "Company held on the 29th day of June, 1869, Mr. Williams, "as Executor of Dr. Rush, expressed an intention of erecting "the Library Building contemplated by the provisions of the "said will on the square of ground on the corner of Broad and "Christian Streets in this city."

"*Now further Resolved*, That it is the opinion of the Direc- "tors of this Company that the removal of their collection of "books to the site thus proposed would, under the circum- "stances, be destructive of the interests of the Library and "contrary to the wishes of a vast majority of the Stock- "holders."

"*Resolved*, That the Directors take this, as the first oppor- "tunity since the Company has been authorized by law to "accept the trusts of Dr. Rush's will, to express to Mr. Wil- "liams their earnest hope and request that he will reconsider "his said intention of building on the site named."

"*Resolved*, That Dr. Willing, Judge Hare, and Mr. Lea be

(*y*) Bill, page 17. Answer, page 29.

"appointed a committee to communicate these resolutions to "Mr. Williams and to confer with him on the subject.

"*It was further Resolved*, That the counsel of the Company "be consulted with regard to the present rights and duties of "the Library Company of Philadelphia as Trustees for the "Ridgway Branch of the Library."

In reply to this he wrote. After informing the Committee of the fact of his promise to Dr. Rush, he asked them whether it would be consistent with truth and honesty for him VOLUNTARILY, in opposition to the wishes of the testator and to 'HIS OWN DELIBERATE JUDGMENT,' to violate a pledge given under circumstances, which rendered it as sacred as an oath, for the reasons assigned, viz., "to gratify the wishes of the shareholders," who had refused to pass a resolution expressing their gratitude for Dr. Rush's gift. He balanced the respective weight of the wishes of ungrateful beneficiaries and of a munificent testator, and he argued that he had no right to turn the scales in favor of the former, voluntarily, in opposition to his own judgment, and to a solemn promise to the latter. He nowhere intimated that his promise would induce him to violate his duty as Executor, but merely that it would be dishonorable for him to violate his promise in *opposition* to such duty. He concluded by giving the reasons why, in his judgment, the lot selected was the one best adapted to the purposes intended.

The evidence in proof of the exercise by Mr. Williams, of his own judgment, uninfluenced by his promise, is found in the following extracts:—

Mr. Williams says, on page 20 of his answer:—

"I do insist, as charged in the 30th paragraph, that I have "selected the said site in the exercise of my *own* discretion, "unbiased by any promise; and I deny that any promise, how-"ever it may be felt to be morally binding, did prevent or can "prevent my exercising, or knowing that I have exercised, my "judgment. I aver, that I am now able to say what line of "conduct I would have followed if I had never made a promise, "and that I would have selected the site at Broad and Chris-"tian Streets, if Dr. Rush had been silent as to his wishes."

On the 6th August, 1869, Mr. Williams wrote to Mr. Fraley, Chairman of a Sub-Committee of Stockholders, page 128 of Examiner's Report, as follows:—

"With regard to the site of the building, I thought I had, "on more than one occasion, expressed myself with sufficient "clearness, but I will again repeat that it is my intention to "place it on the square at the corner of Broad and Christian "Streets. I deem that situation most expedient under all the "circumstances of the case, for I consider its distance from the "centre of the city as far outweighed by its other advantages, "and I have the consolation of knowing that this decision is "in entire accordance with the wishes of the testator who se- "lected and purchased this lot for this very purpose in his "lifetime. It is his money that I am to spend, and I do not "find in his will anything authorizing me to be governed by the "opinions of other persons in opposition to his judgment as "well as to my own. I should think in so doing I was vio- "lating the trust he has reposed in me. I therefore answer "your first and second questions, decidedly in the negative."

The Committee of managing stockholders, reported, as to the site, prior to 21st October, 1869, page 137 of Examiner's Report:—

"But the executor of Dr. Rush, both from the expressed "wishes of the testator during his life, *as well as from his "own judgment of the suitableness of the selected site*, is indis- "posed to change it."

On pp. 202, 203, 208, and 209, of the Examiner's Report, we find this testimony of Mr. Williams:—

"Q. Since Dr. Rush's death, has any member of the Li- "brary Company directed your attention to any lot as suita- "ble for the Library Building, other than one of the lots "examined by you prior to his decease?

"A. No, sir. Mr. Fraley mentioned several lots on which "he thought a library might be placed, but every one had "been examined by me, reported to Dr. Rush, and rejected by "him, either on the ground of size or of price.

"Q. Was there not some lot rejected by Dr. Rush which "you yourself approved of?

"A. I think not. When I said approved of, I meant with "reference to Dr. Rush's will. I knew what he had required "me to consider, and except the Deaf and Dumb lot, Mr. "Dundas's, the Pennsylvania Railroad lot, and Gen. Patter-

"son's, they were all too small, and of all these the prices "were too high in my opinion.

"Q. Since Dr. Rush's decease, have you examined as to "whether there are any available lots suitable, in your opinion, "for the Library Building, other than those examined before "his decease?

"A. I have examined none, because I know of no others. "I have heard of no lot, which I consider suitable for the "Library, *as* suitable as the lot at Broad and Christian.

"Q. In your answer you have given the prices of various "lots in the city of Philadelphia. State when and how you "ascertained those prices.

"A. As to all lots, the prices of which are given on page 8 "of my Answer, saving as to those north of Monument "Cemetery, I learned the prices of almost all of these from "Mr. Pratt, a prominent real estate agent. The price of the "burnt depot I learned from Mr. Gowen.

"Q. Was the question as to your duty under Dr. Rush's "will with regard to the selection of a site submitted by you "to counsel?

"A. I am sure it was; I am certain Judge Strong gave me "an opinion upon it; the opinion was dated July 9, 1869, and "was in these words:—

"'As executor you are guided by the written will. In the "exercise of the discretion reposed in you by that instrument, "you may regard Dr. Rush's views and wishes orally expressed; "but after all *your* judgment, however it may be made up, "must be your guide in matters left to your discretion. You "will remember that Mr. Meredith and Mr. McMurtrie sug- "gested the Court might control your discretion, if it is "*fettered* by any oral promise or verbal direction. The sugges- "tion I think uncalled for and unfounded, but it is best to "avoid unnecessary reference to oral instructions given by the "testator.'

"Q. In pursuance to this advice, as to your duty to act "upon your own discretion, unfettered by promises, in select- "ing a site for the Library building, did you consider the "question of such selection in accordance with your judg- "ment, irrespective of your promise, and if so, with what "result?

"A. I did; after Dr. Rush's death, I was obliged, of course, "in order to assume the duties of executor, to take the "ordinary oath, which obliged me to carry out the directions "of the will. This was a legal as well as a moral obligation; "and under it I did then, and have done ever since, considered "the question as to the site of the Library entirely irrespective "of any promise made to Dr. Rush, or of any wish expressed "by him, and I became then and have continued ever since

"convinced, according to the best judgment I am able to form, "that this lot posesses advantages which are attainable in no "other *with* which I am acquainted.

"Q. Is not this judgment influenced by your promise?

"(Objected to as leading.)

"A. Not that I am conscious of at all. I believe that if I "had made no promise and had not known the wishes of Dr. "Rush, my judgment would have been the same.

"Q. Had your judgment been different, would you not have "felt obliged under your promise, which in the Bill is alleged "to have been spoken of by you as 'binding as an oath,' to "have chosen the Broad and Christian Streets site notwith- "standing?

"(Objected to as leading.)

"A. No, sir. If my promise to Dr. Rush and my oath as "Executor had been at all in conflict, I would have resigned "my Executorship at once and left some other person to put "up the building."

On page 53 of the Examiner's Report, Mr. Whitman, the Secretary of the Library Company, testifies, under cross-examination:—

"Q. Have you heard at any of the meetings either of stock- "holders or Directors, expressions of opinion by Mr. Williams "as to the propriety of the site at Broad and Christian Streets "for the erection of a library building?

"A. I have.

"Q. State what those expressions were, or their substance.

"A. They were to the effect, that the lot was a large and "eligible one, that he thought it would be as easy for the "stockholders, or for a large majority of them, who would "have to ride, as he thought, when they visited the Library, to "go to Broad and Christian as it would to go to Broad and "Walnut, or to any place that had been suggested as a cen- "tral and convenient location for the Library. I remember "his speaking of the several railroads, the Union, and the 13th "and 15th, by which stockholders could reach the Library "from any part of the city. He also said that this Library "was to be built for all time, and that it might be in future "as central as any location talked of. He gave various other "reasons of that nature.

"Q. Did you ever hear him express the slightest doubt as "to the propriety of the site?

"A. I don't recollect that I have.

"Q. Were not such expressions of opinion made at or about "the time he spoke of his promise to Dr. Rush?

"A. I don't recollect whether the remark concerning the

"ease of reaching it by railroad, and the probable future cen-
"trality of the location, were made at the same time when he
"spoke of the other. I heard them at several times.

"Q. Between what periods of time were any statements
"made by him on either of these points?

"A. Between the annunciation to the Library of the gift
"by the will, and the last meeting of the stockholders."

On pages 59, 60, and 63 of the Examiner's Report, we find this testimony by Mr. Fraley, one of the stockholders, and a witness for complainants:—

"My proposition was agreed to, and a Committee consisting
"of Judge King, Mr. Longstreth, and myself, was appointed.
"The Committee met, organized, and requested me to confer
"with Mr. Williams. I made an appointment with him for such
"a conference, met him, and went pretty fully over all the mat-
"ters connected with the bequest, expressed to him strongly
"the belief I had that unless the site were changed the share-
"holders would not agree to accept the legacy, and then
"directed his attention to several other sites that I supposed
"would be more favorable for the Library, and stated that if
"any one of them were selected, all opposition would be
"quieted. Mr. Williams replied that those lots had all been
"examined, that the prices at which they were held were so
"high as to prevent the acceptance of any of them by Dr.
"Rush, and that the Broad and Christian Street lot had been
"selected because, both in the judgment of Dr. Rush and of
"himself, it combined all the advantages that he wished to
"secure. I then proposed to Mr. Williams that he should
"reconsider the matter, and that I felt sure if he would
"adopt a different site, the cost of which should be more than
"the price of the Broad and Christian Street lot, that then,
"from my intercourse with the shareholders, I believed they
"would make up the difference in the price of the lots, or any
"loss that might be sustained by the sale of the Broad and
"Christian Street property. Mr. Williams, however, firmly
"declined to entertain any such proposition. He repeated to
"me in still stronger terms than he had used at the meeting,
"how fully he felt bound by his promise to Dr. Rush, and
"that, as in his own judgment the Broad and Christian Street
"lot was the best site in all respects for the Library, he
"should place it there, unless he were prevented by the order
"of some court of competent jurisdiction."

IV. *Opinion of the Court Below.*

MERCUR, J.

This case comes before me upon exceptions to the report of a Master. He was directed to report the law, the facts, and a decree proper to be made therein. Twenty-two exceptions have been filed to his report. The very able arguments of counsel, however, have not been directed to each exception separately, but rather to the discussion of two questions, which may be stated to be covered by these, to wit:—

First. What powers were vested in the defendant under the trust created by the will of Dr. James Rush in regard to the location and purpose of the library building?

Secondly. Has he properly executed those powers in selecting the lot at Broad and Christian Streets as the site for said library building?

The first question can be more satisfactorily answered by referring at some length to different portions of the will.

The testator, by his will of the 26th of February, 1860, devised and bequeathed the whole of his real and personal estate to his brother-in-law, Henry J. Williams, his heirs and assigns, in trust, to pay certain legacies, annuities, gifts, and bequests, to be thereafter expressed in codicils, and then to hold the residue and remainder of his estate "in trust, to select and purchase a lot of ground, not less than one hundred and fifty feet square, situate between Fourth and Fifteenth and Spruce and Race Streets, in the city of Philadelphia, and thereon to erect a fire-proof building, sufficiently large to accommodate and contain all the books of the Library Company of Philadelphia." And upon the further trust, "so soon as this building is completed and ready for occupation, then in trust to convey the same, with the lot of ground whereon it is erected, unto 'The Library Company of Philadelphia' aforesaid,

and their successors, for the uses and purposes of their library, and for no other use or purpose whatever." Providing, however, before such conveyance should be made to the said Library Company, they should, either by an alteration in their charter or in some other way satisfactory to his executor, bind themselves and their successors to conform to, and comply with, certain express conditions therein specified. One of the conditions was "that all the accounts of the receipts and expenditures from the estates aforesaid, real and personal, shall be kept separate and distinct from all other accounts of the said Library Company, and shall all be headed and kept as the accounts of 'The Ridgway Branch of the Library Company of Philadelphia.'"

He also appointed said Williams executor of said will.

By a "first codicil" thereto, dated the 16th of May, 1866, he imposed additional restrictions upon said Library Company, and designated the beneficiaries of the legacies, annuities, and gifts indicated in his original will.

In his "additional codicil" of the 18th of April, 1867, he says, "I authorize and allow my executor, under a broad and thoughtful foresight, to increase the size of the lot and select any situation he may deem most expedient, without regard to any provision of my will or codicils."

On the 18th of January, 1869, Dr. Rush purchased by contract a lot at Broad and Christian Streets in the city of Philadelphia, for the avowed purpose of having the Library building erected thereon, and made a payment of $1000 upon the contract. He held this lot subject to the payment of the residue of the purchase money at the time of his death. That occurred on the 26th of May, 1869. The defendant has selected this lot as the site for the library building. Had he the power in equity so to do? He says, he had: that the will left it to his sole judgment and discretion, and not to the judgment and discretion of anybody else; and in the exercise of that judgment and discretion he has made the selection. Superadded to the power given

him in the will he points to the purchase of this identical lot by the testator, after the execution of his will, with the express object of having the library building located thereon, and claims that was an ademption *pro tanto*.

I, however, am of the opinion that the doctrine of ademption or double portion cannot be applied to the facts in this case. The defendant must fall back upon the will, and rely upon that alone, for his authority. By that instrument he was authorized to select any lot which commended itself to his own free, unbiased judgment as most suitable. If no improper influences were operating upon his mind and warping his judgment in the exercise of his discretion, and he acted in good faith, a court of equity will not interfere with that discretion; Hill on Trustees, 489; Gochenauer vs. Froelich, 8 Watts, 18; Chew vs. Chew, 4 Casey, 17; Pulpress et al. vs. Af. M. E. Church, 12 Wright, 204. But discretionary powers like other authorities must be exercised in the manner prescribed by the trust instrument. Hill on Trustees, 488.

To the defendant was given by this instrument the power to select any lot which "under a broad and thoughtful foresight" commended itself to his judgment. The selection must be made under and by the exercise of the defendant's judgment entirely free from any obligation imposed upon it by the testator other than those contained in the will and codicils. Such a discretion the defendant must bring to the discharge of his trust, and then it only marks the limits of the power given to him. The exercise of such a discretion the claimants have a right to demand. They can require no more, and may not submit to any less.

Secondly. Did the defendant properly use his own discretion, and execute the power intrusted to him in the selection of the lot in question? The complainants aver that this site will be prejudicial to the interests of the library, utterly destructive of the trusts which they have hitherto administered, and which they claim it was the manifest design of the testator to promote. They further allege that

the defendant assumed the trust under such a trammelled and crippled discretion that he was thereby disabled from using his natural unbiassed judgment in the selection of the lot. The Master concurred in this, and in his very able report has found "that the trustee, by his promise to the testator, had so crippled his discretion as to make it impossible to say how much his preference for the lot in question is due to his unbiassed opinion that it is most expedient for the purpose, and how much to his promise to Dr. Rush," and that the action of the defendant should be subjected to the control of the court.

This presents the controlling question in the case. Do the facts and the law justify the Master in his conclusions?

The evidence shows that some weeks before the death of the testator he became very anxious to have the location of the intended library building fixed and settled; and he desired the defendant to ascertain the size and cost of all the vacant lots on Broad Street (upon which street he desired it to be placed). The defendant procured statements of the sizes and prices of all he thought suitable, from Vine to South Street; but Dr. Rush was not satisfied with any of them. Some other gentlemen brought him a plan of the lot on Christian Street, and he was so much pleased with it that he directed the defendant to buy it at once. The defendant did so, by the aforesaid contract of May 18th, 1869. The Doctor thereupon expressed great pleasure that it was concluded, as it relieved his mind from all anxiety. "Some days after," says the defendant (in his letter of the 30th December, 1870, to Dr. Charles Willing, chairman of a committee appointed by the complainants), "the Doctor recurred again to this subject, as it had probably occurred to him that he had given me an absolute discretion as to the situation of the library by the terms of his will, and that I might be induced to overrule his decision after he was gone. He called me to his bedside and asked me to give him a promise that I would build the library on that lot, and nowhere else. I gave him this promise as fully and

solemnly as language could express it, and he then thanked me, and said he could now die in peace."

In his testimony taken before the Examiner on the 17th of April, 1872, he says: "I think it was about the second day after the interview with Mr. Wharton (which he had just stated was on the 20th or 21st of May, 1869), when I was seated by Dr. Rush's bedside. I think the lot had been the subject of conversation between us, when the Doctor turned to me and said, 'Harry, now you will promise me to put the building upon that lot?' I said, 'Certainly, Doctor, if you desire it; I will promise you that I will put it there, and nowhere else.' The Doctor merely expressed his satisfaction. I think he said, as near as I can recollect, 'Well, I am very glad of it; it is now all settled.' "

The Doctor died within five or six days thereafter. This promise, then, was demanded and given a very few days prior to his death. It was two years after the last codicil to his will had been executed. It was demanded of a brother-in-law to whom he was about to intrust more than a million of dollars—I say about to intrust, for there was yet time for him to revoke the will and all of its trusts. He was unwilling to pass all his vast estate into the hands of the defendant upon the implied assurance that the library building would be located upon the lot which he had purchased for its site. Hence he made the specific demand. What his action would have been, had the defendant's answer not been in accord with his judgment, is left to conjecture. He suffered his will to remain unchanged. He passed from this earth, there is every reason to believe, in an abiding faith that he had restrained the free choice of the defendant, and that he had secured the erection of the library building upon the lot designated by himself.

What was the position of the defendant? He knew that he had been named in the testator's will as his trustee and executor. Sitting by the bedside of his dying friend and brother—recognizing the Doctor's right to control his own

property—wishing to relieve his mind from all doubt upon the subject that troubled him, the defendant then and there promised, as fully and as solemnly as language could express it, to put the building on that lot and nowhere else. Do not all the attendant and surrounding circumstances impress the mind of every conscientious and reflecting person with the very strong moral obligation thereby imposed upon the defendant? I can scarcely conceive one stronger. The greater the integrity, the higher the moral sense, the stronger would be the obligation upon the conscience. That the defendant possesses both in a high degree is manifest in his letter of the 30th December before referred to. When asked, in behalf of the claimants, to reconsider his intention of building on said lot, and locate the building elsewhere, his answer was such as did credit alike to his conscience and to his heart. After repeating the promise which he had made, and the circumstances under which it was made, he says:—"Now, do you think it would be at all consistent with truth and honesty for me voluntarily to violate a pledge given under circumstances which render it as sacred as an oath, and made to a dying man who had confided to me the whole of his estate? Would you, with your well-known delicacy and sensibility to all honorable engagements, feel yourself justified in doing so were the case your own, and should I not lose your respect and regard (which I value very highly) were I to hesitate for a moment as to what was my duty?"

Therein and thereby he proves the indelible stamp made upon his mind. Conscience, resting under an obligation strong as an oath, bound him to the observance of his promise. With that deep recognition of moral obligation resting upon his conscience, he assumed the duties of the trust. He thinks he executed the power and discharged the trust under the written will alone, wholly uninfluenced by his promise.

The well-known integrity and the high moral character

of the defendant do not permit me to doubt that he honestly thinks so. If, however, he be correct, there must have been a time when his conscience was absolved from this deep moral obligation—a time when he threw it off, and when the lawful one took exclusive possession of his judgment. I understand the answer to be that it was at the time he was obligated to take the usual oath in order to assume the duties of executor. This was on the 31st of May, 1869. This latter oath, he says, created a legal as well as a moral obligation. Did it, however, wholly eradicate the moral obligation, "sacred as an oath," under which he had rested up to that time? In his letter of 30th December, 1870, he refers to it as still resting strongly upon him, and that his duty required him to be influenced thereby.

It is contended, however, inasmuch as the defendant has sworn in his answer, and again before the examiner, that he has considered and decided the question as to the site of the library building entirely irrespective of and uninfluenced by any promise made by him to Dr. Rush, that the complainants have failed to make a case in which a court of equity will interfere with the discretion which he has exercised.

In considering the act which the defendant has committed, or is about to commit, we must look at the position of the donor, the donee, and of the beneficiaries of the power. The beneficiaries have the right to require the power to be executed according to the terms of the written instrument creating it. If the donor induced the donee to accept the trust under a pledge that he would execute it otherwise than was provided in the instrument, he committed, in equity, a fraud upon the power. If the donee accepted it under such pledge and so executed it, he committed a fraud upon the power. It is not necessarily a moral fraud. A wilful departure from the terms of the power is a fraud upon it, without regard to whether the motive thereto was good or bad. Topham *v.* the Duke of Portland, 1 De Gex. Jones

& Smith, 571. Nor does it change the rule of law in regard to the agreement to pervert the trust from the original purpose for which the power was intended, whether that influence be exerted before the appointment or after it, provided that in both cases it secures the consent of the appointee to fulfil the wishes of the appointer. Topham *v.* Portland, 31 Beavan's Reports, 539, 540.

No American authority has been found which covers the case under consideration, but in Topham *v.* The Duke of Portland, reported in 5 Chan. Appeal Cases, 40, it is held that although the donor and the donee both swore that the power was not executed to carry out any agreement between them, other than those specified in the written instrument, yet that a chancellor might look beyond the oaths and see whether the presence of a moral obligation did not at the date of the appointment, and when the trustee came to act, weigh upon her mind with such force as to make her a passive instrument of the donor's intentions.

A judge or juror is forbidden to sit in a case wherein a party litigant is closely related to him by blood or marriage. He will not be permitted to purge himself of his disqualification by answering that he can, and will act wholly uninfluenced by such relationship.

Certain facts, which the wisdom of ages has recognized as influencing the judgment of mankind generally, create a conclusion of law that they will influence the judgment of each individual.

Applying the law and reasons to this case, testing the uncontradicted evidence by all those principles which I have ever been taught to believe influence the human mind, and control the actions of men, it does establish such a state of facts as would naturally and reasonably restrain and trammel the free judgment of the donee of a power. Such a general presumption cannot be removed by the honest opinion of a donee that in his particular case he is not influenced thereby. Hence I am unable to conclude

that the defendant had, when he made the selection of the lot in question, or has now, such a free discretion and unbiassed judgment as the complainants are entitled to invoke and a court of equity bound to provide. It should therefore be referred to a master to inquire and report what will be the most expedient location for said library building, without my indicating any opinion as to whether or not the lot at Broad and Christian Streets is a suitable one.

The exceptions to the report are dismissed, the report of the master is confirmed, and decree accordingly.

Decree.

And now, this 31st day of December, A. D. 1872, this cause came on to be heard upon bill, answer, replication, and proofs, and was argued by counsel; Whereupon, in consideration thereof, the Court are of opinion and so declare, First, that the complainants are competent to, and of right may, when the proper time shall arrive, assume the trust confided to them by the will of the testator, Dr. James Rush; Secondly, that all the powers to that end conferred on the defendent by the will of the said testator are trusts, in which the complainants have an interest in the nature of property, and which are to be administered by the defendant only in the manner in which all trusts can, or of right ought to be administered; And it appearing to the court, as well by the written admissions of the defendant as by his answer and testimony in this cause, that at and before the time when the said trust vested in him, he had absolutely bound the discretion intended to be given to him by the said will as to the selection of a site for the building proposed by the testator to be erected, and was and is thereby disqualified from, and incapable of exercising the power and trust in that behalf given to him by the said will, and that, in order to carry out the true intent and meaning thereof, the said trust may, and should be now exercised under the supervision of this Court according to

the course and practice of chancery;—it is, therefore, ordered and decreed that it be referred to

Esq., as master, to inquire and report what would be the most expedient situation for the said building, to the end that the true intent and purpose of the testator, as contained in his will, may be carried into full effect; And that he have authority to take testimony in addition to that taken before the examiner; And that the defendant be restrained, until further order, from proceeding to erect the said building on the lot situate at the southeast corner of Broad and Christian Streets; And the Court reserves all questions of costs and expenses for its further consideration.

V. *Assignments of Error.*

1. The court erred in granting an injunction against the erection of a building on the lot described in the bill.
2. The court erred in granting the prayer of the bill.
3. The court erred in decreeing in favor of complainant.
4. The court erred in refusing to dismiss the bill.

VI. *Argument.*

It is conceded by the complainants that the executor, who has selected a site which will in the deliberate judgment of the donor of the power, best promote its objects, has honestly endeavored, since his appointment, to do his duty under the will, and that he believes he has done this. There is no allegation of any fraudulent or improper conduct, nor does any one breathe a suspicion as to the honesty of his motives. It is claimed, however, that a pro-

mise given before any duty devolved upon him, to the only person who had a right to object, rendered it impossible for him thereafter to exercise any judgment, although the exigency against which the promise was meant to guard —the ascertainment of a lot more suitable—has never arisen. In view of this claim we do not care to discuss the questions to which the Master's report is principally devoted, such as whether or not the complainants are a *charity*, or whether they have done what was necessary to put them in a position to pray for relief. A very cursory examination has shown that they have sedulously avoided committing themselves to any decided acceptance of the legacy, and that they have inserted in the act of Assembly which they drafted, a proviso, that will render it impossible for them ever to accept it, in good faith. Though their *legal* rights be not dependent upon their establishing their *status* as a charity, still, in one aspect of the case, such *status* is not without importance, as their refusal to comply with the conditions imposed will lead to the establishment of a library which will be a great public charity.

Behind such minor questions, looms through the darkness out of which it arose, the shadow of a doctrine, so monstrous in its proportions, that everything else will be left unnoticed, in the effort to secure for it the judicial condemnation it so richly deserves. This doctrine, stated above, we will examine from several points of view, and by the light of certain propositions which we hope to maintain.

First. The nature and design of the power conferred upon Mr. Williams will be briefly considered.

Second. The decree can only be sustained by maintaining the three propositions following, all of which, we submit, are indefensible.

1. That Mr. Williams acted under his promise and not in pursuance of his power, and that it is impossible for

him to know that he exercises his judgment in his selection of the site, or to testify as to the reasons which led him to his conclusions.

2. That his promise, once made, so affected his mental faculties, that it was impossible for him thereafter, though advised it was his legal duty to select a site—a duty he desired to perform—to possess or exercise any judgment as to the matter.

3. That, though, from the time the power vested—advised as to his duty and anxious to perform it—he did everything he could to exercise, uninfluenced by his promise, the best judgment he possessed, and though he selected a site which he honestly believed to be most suitable for the purposes contemplated by the will, yet the Library Company are entitled to demand of him the possession and exercise of a better discretion, and to insist upon his removal because of its absence.

Third. Equity will only interfere with the exercise of a power where there is *mala-fides*, either in refusing to act at all, or in acting with an intention or purpose to accomplish some object or end, not contemplated by the power. There is no precedent for interference in a case like the present.

Fourth. The proper remedy, if it had been proven that Mr. Williams, though honestly believing he was exercising his own judgment, had selected an improper site because he was insensibly influenced by his promise, would have been, to enjoin him from building thereon, and to order him to select another. The decree which prohibits him from making choice not alone of that site, but of all others, is without precedent.

Fifth. The objections, moral and legal, against the interference prayed for, are infinitely stronger than any reasons which have been, or can be, advanced in its favor.

I.

As to the nature and design of the power.

The original power prescribed no restriction upon the selection. The executor was ordered to select, but his choice was not confined to such a lot as "he deemed expedient." If Dr. Rush had spoken of a particular lot as one most suitable for the Library, Mr. Williams would have been entitled to select it; for, within the territory designated, any one might have been chosen possessing the requisite size.

The supplemental power was given, not to *restrict*, but to *enlarge*, that originally given. In the will, dimensions were mentioned and the area of selection was limited; but, in the interval, Dr. Rush had found that the plan he contemplated would require a larger lot than he had supposed. He had also seen more and more destruction through overgrowth, and he had become exceedingly anxious lest a lot should be chosen, so small, that in the future it might be found necessary to tear down the building which would have been erected at so great outlay. To guard against this, and for this reason only, he *withdrew* the restriction as to locality, having doubtless found that a lot sufficiently large, within the original limits, could not be obtained for a reasonable price.

Prior to this *he* had not deemed it expedient to select a lot outside these bounds, but now, under a broad and thoughtful foresight as to the danger of tearing down and re-sale, which he apprehended, he authorized his Executor to increase the size of the lot, and to select any situation. The words "he may deem most expedient," were used to

render more marked the withdrawal of the restriction as to locality which the *testator* had theretofore deemed expedient.

The main desire was to secure a lot possessing ADEQUATE DIMENSIONS, in order to guard against the danger of demolition, of which Dr. Rush manifested such an almost morbid fear. Centrality had once been made a condition; but, finding it only obtainable at a risk he deemed too great, Dr. Rush withdrew the restrictions by which it would have been insured. When the Executor found that a lot sufficiently large could not be obtained within the old limits, he availed himself of the privilege thus given him.

At best, "expediency" is prescribed as the reason for selection. This is defined as "propriety under the peculiar circumstances of the case." A perusal of his will shows that Dr. Rush had peculiar ideas as to the uses and purposes of a library. He did not wish to endow one of those lounging, chess-playing, novel-circulating libraries of the day, which must be established in the midst of the peculiar community to which they cater. With a full knowledge of what would best effectuate the end of his will, he deliberately purchased the lot in question. Though it is not necessary for the purposes of this case, we might well contend, that as the one who best knew what was wanted, deemed it most suitable, Mr. Williams might also select it as "most proper under the peculiar circumstances of the case."

In Hitch *v.* Leworthy, 2 Hare 207, there was a "devise "and bequest of freehold, copyhold, and personal estate, "upon trust for sale at the discretion of the trustee, and "that the rents, interest, and proceeds should be divided "amongst a class, either equally or in other proportions as "the trustees, having regard to their circumstances, should "appoint; followed by an unattested codicil, directing the "application of such rents, interest, and proceeds for the "benefit of such of the class as were unmarried or unset-"tled, and particularly for the comfortable support of P. "(one of the class), who was of weak mind." In appoint-

ing, the trustee followed the directions of this unattested codicil. It was held by Vice-Chancellor Wigram: "It "was argued that the codicil operated only with respect to "the copyhold estates and the personalty. This argument "is founded on a proposition which, in theory, is no doubt "true, and, for some purposes, is true in practice, but it is "not so for all purposes. The will in this case gives "Leworthy powers large enough to do much that he has "absolutely directed to be done during the life or con- "tinued incapacity of the lunatic, and the codicil certainly "does not restrain it. Admitting that the powers given "by the codicil would not authorize Leworthy to do some "matters as to freehold which he might as to copyhold, "*there is no reason why he should not, in the honest exer-* "*cise of the discretionary powers given under the will,* "*have regard to the known wishes of the testatrix, whether* "*those wishes were obligatory or not.* Her wishes, commu- "nicated in conversation, would not be obligatory, but "there is no reason why he should not attend to them in "the exercise of his discretionary powers; and if he might, "for that purpose, have regard to conversation not having "any testamentary force, I do not see why he may not "regard mere wishes, notwithstanding he derives his "knowledge of them from the language of the codicil."

Expediency is different as looked at with the mental sight of different men. Dr. Rush knew this and prescribed the eyes through which it should be seen. He did not direct Mr. Williams to select the best lot; but to choose the one which HE should deem most expedient.

It has been decreed that such a lot shall be chosen as some appointee of the court shall select, though it may be one which the chosen trustee would utterly condemn.

II.

The propositions which must be maintained in order to maintain the decree.

1. Did Mr. Williams act under his promise and not in pursuance of his power?

Complainants in their bill assert the affirmative. Unless they prove it they have no right to relief. Have they done so? They point to the letter of 30 December, 1870, as proof. In that letter Mr. Williams communicates the fact that he did make a promise; but asserts, in the most decided manner, that he selected the lot because, in HIS JUDGMENT, it was most expedient. He does not say that his promise influenced his selection; but simply that having made the selection, because, in his judgment, it was best, he could not voluntarily build elsewhere, on a lot not so good, in violation of his promise to build there and nowhere else. If this case is to be determined, like every other, upon the evidence, it fails for want of proof. Of this there is none. All the evidence is opposed to the allegations of the bill. The witnesses of complainants, Messrs. Whitman and Fraley, testify that from the outset, at least eighteen months before his letter was written, and repeatedly afterwards, Mr. Williams said what in it he asserted—that the lot he had chosen was the most suitable for the purposes of the will. It cannot be claimed that he was then seeking to make evidence for himself; for had this been his design he would have been silent altogether. Mr. Williams swears to his belief in most unequivocal language, and he gives the reasons which induced it. He also swears that with all the lots before him, of which afterwards he knew when it became necessary to make his selection under the will, he had come to this conclusion before any promise was given. In

this Mr. Wharton corroborates him. The answer is as potent as two oaths, but against it there is not even one.

No unfavorable inference can be drawn from the coincidence in the selection of the same lot by Mr. Williams and by Dr. Rush, for the available lots are exceedingly few, and the one preferred was not chosen in the first instance until after the most thorough investigation.

Complainants, well aware of the meagerness of their facts, claim that this is an exceptional case, and that conviction must here result by a species of spontaneous generation. They are entitled to no relief unless Mr. Williams is disqualified by reason of his action having been under his promise. They prove the promise by a letter in which he mentions it, but asserts that he is not acting under it, and then ask the court to say that the promise itself raises a conclusive presumption that he is acting under it. When their attention was first directed to the subject, they entertained different, and as we think, more correct views of the law. They then only claimed(z) "the question in "such cases is, always, whether the devisee considers him- "self morally or conscientiously bound to carry out the "wishes of the testator privately expressed, or as being "perfectly free to exercise his own private judgment in the "disposition of the property. In the opinion of your Com- "mittee, Mr. Williams would probably be held to stand in "such a position, and on a bill filed by any one in interest, "could be required to answer whether the selection of this "location was made according to the best of his own per- "sonal judgment as to what was best for the institution, "regardless of any promise to or request by the testator. "The result of such an inquiry hereafter instituted might "indeed be very disastrous. For, if Mr. Williams, having "acted on this secret trust, and confessing himself to have "done so, should select this lot and erect the Library Build- "ing on it, the heirs of Dr. Rush might claim that the gift

(z) Examiner's Report, p. 193(e.)

"was void in whole or in part, and assert a forfeiture under "the provisions of the act."

We admit that Mr. Williams will not, until judicially prevented, erect the building on any other lot than the one he has selected, and that he promised he would not; but we assert that it never became necessary for him to act under this promise because he never heard of a more suitable site. If he had, then, under the advice he had received that it was his legal duty as Executor to carry out the will irrespective of such promise, he would have resigned, and thus could have kept his promise inviolate without any breach of a duty morally as obligatory on him and legally more so, by reason of its being based upon an actual oath administered by the Register of Wills. Mr. Williams never promised not to exercise his judgment, and he never said that he felt an obligation upon him *not* to do so. All he promised was, that though his judgment should prove adverse to the lot selected in Dr. Rush's lifetime, still he would build on it and not elsewhere. As no conflict of judgment arose, the promise amounted to nothing.

Complainants admit that Mr. Williams believes he has exercised his own judgment; but say that it is impossible for him to testify as to the motives which influenced him in the selection of a site. The Master seems to regard as pertinent, the case of Clark *v.* Van Reimsdyk, 9 Cranch 153, in which it was held impossible for one man to swear, as of his own knowledge, to the motives which influenced another, upwards of 7000 miles away; but the complainants themselves never quoted this, and we cannot see its application.

No decided case has ever held that it is impossible for a man to say why he came to a particular conclusion. It has ever been thought, that if truthful, the party himself must necessarily be the best witness as to the reasons of his conduct. The selection of a site for a building does not involve such complicated mental operations that it is im-

possible to trace them. Mr. Williams has traced them and has sworn to the result.

If he can be believed, the bill fails through disproof of its allegations. The burden of showing that he cannot be believed, is upon the complainants. They content themselves with asserting a metaphysical proposition in opposition to every-day experience, without any citation of legal authority to support them. It is with the *purpose* only that the Court can concern itself. Mr. Williams can certainly testify as to whether he did or did not act with the *intention* of selecting the best site.

2. Did the making of a promise as to the place on which he would build, render it imposible for Mr. Williams thereafter to determine as to the expediency of a site?

The affirmative is on the complainants, and we might wait until it was established before proving the negative.

Mr. Williams has testified to the advice as to his duty, given to him by his counsel, and has sworn that he endeavored to perform it, and that he did perform it. If, in the exercise of his judgment, a different site had been selected, would this have been nugatory by reason of disqualification to act? If not, can we logically hold that the disqualification exists because his judgment has induced the same selection which was made in the testator's lifetime. If it be *possible* to shake off the influence, we must believe the uncontradicted testimony that it actually was shaken off. If it be not, then the promise rendered it impossible for Mr. Williams to select any lot, even with the approval of complainants. It would be difficult to establish the influence of a promise to decide in favor of the expediency of a particular site, on a subsequent opinion that such site was really most expedient, but it is impossible to trace any connection between such an opinion and a promise to build on such a site whether it shall be found to be expedient or not. The promise may bind the *conscience*, but the opinion results

from the exercise of judgment, whose workings are independent.

Mr. Williams, knowing that it is his duty to act under the will, says that if his opinions were adverse to his promise he would resign; but that he can conscientiously act without any violation of duty or promise.

In the every-day practice of our criminal courts, in their examination as to the qualifications of jurors in murder trials, the question of the extent of the influence upon the judgment, of conscientious scruples, is held to be for the jurors themselves.

In Commonwealth *v.* Knapp, 9 Pick. 496, "Mr. Green "stated in reply to the inquiry in regard to his opinions "upon finding a verdict in a case punishable with death, "that he was opposed to capital punishment, but that he "did not think that his opinions would interfere with his "doing his duty as a juror. The Chief Justice, after con- "ferring with the other judges, intimated to him that the "state of his opinion was a matter which he must decide "for himself; that as he had stated it, the court did not "consider him disqualified. Mr. Green, after some hesi- "tation, took the oath. When he was called to take his "seat he stated to the court that he thought it inconsistent "for him to serve as a juror, holding the opinions he did, "and should prefer being let off. The Chief Justice re- "marked, that it was a question to decide whether his "opinions would prevent his giving an unbiased verdict. "Mr. Green replied that he thought he could give an "unbiased judgment, yet he had a sympathy for the pri- "soner and his family, and feared that his opinions in "relation to capital punishment might influence others of "the jury. The court, upon conference, ruled that his "case did not come within the statute, and he was not "excused."

"When, notwithstanding his having conscientious scru- "ples against capital punishment, a juror thought he could "do justice between the State and the accused, he was held

"competent." Williams *v.* State, 33 Miss. 389; People *v.* Stewart, 7 Cal. 140.

In Hanway's Trial, 2 Wall. Jr. 143, it was held that "it "did not constitute incompetency for a person to say that "he had formed a conditional, but not an absolute, opinion "on the law of treason, *e. g.* who says he cannot under-"stand how treason can be committed against the United "States if such and such facts do not constitute it, if he "says that, on being instructed by the court that the "opinion is erroneous, such opinion will cease to influence "him as a juror."

It has been said that the disqualification of judges and jurors furnishes an analogy; but the reasons for their disqualification are inapplicable here.

The permanency of our institutions depends, not only upon the preservation of jurors from actual taint, but from the *suspicion* of it. No harm can result from the rejection of any particular man as a juror, because the whole community affords a sufficient field for the selection of another, and therefore, without actually determining whether certain matters do or do not influence him, he is excluded.

"It did not escape the discernment of our legislature that a principle, requisite to secure a due administration of justice and fair and impartial trials, was, to have jurors who were impartial, and entirely free from all kinds of bias, *or the suspicion* thereof; that, like Cæsar's wife, *they ought not only to be pure, but unsuspected.*" Chess *v.* Chess, 1 Penna. 43.

It is not his conviction of his inability to correctly decide a point of law, which induces a judge who may happen to hold a share of stock in a corporation litigant, to withdraw from the bench when its causes are decided, but it is his desire to keep the administration of justice free from all suspicion.

Here, however, Mr. Williams possesses rights and is intrusted with duties which no one else can perform. We cannot condemn him upon mere suspicion, but must *demonstrate* the actual existence of the taint.

If the parties to litigation waive their objection to a juror interested in the cause, no one else can complain, and the verdict will be valid. Dr. Rush, who alone was interested when he selected Mr. Williams, waived all objections on the ground of bias, and the complainants, whose rights, if any they have, subsequently attached, are not entitled to an impartial juror, though such be the common law right of contestants in a court of justice. Yet they demand the *blank* mind which in a neighboring state has brought such discredit upon the whole system of trial by jury.

With a juror the formation and expression of an opinion would disqualify. Would such an expression prior to Dr. Rush's death afford ground now for a motion to dismiss Mr. Williams from his executorship? No judge feels himself disqualified from sitting in review of cases decided by himself though sharing man's usual unwillingness to be proven in the wrong. As a juror could not do this, it is apparent that many objections are founded on arbitrary common law exemptions, not upon experience of fact.

Interest disqualifies a juror, not because of his inability to form a correct opinion, but through the fear that he will, in futherance of his own private ends, give a verdict *contrary* to his judgment. Can we fear that a man, so sensible as Mr. Williams has shown himself, to the obligations of conscience, would, in violation of his sworn duty, though his judgment pointed to one site, disregard it for another? The same conscience which impresses upon him the obligation of a mere promise, would enforce upon him the still more solemn obligation of his oath.

3. Were the Library Company entitled to any better judgment than that possessed by the executor at the time it became necessary for him to exercise it?

We have already said that the measure of expediency

prescribed by Dr. Rush was not absolute, but relative—such only as the donee of the power should establish. It is not alleged that the latter has refused to exercise his judgment, but simply that its quality is not good.

We submit that the discretion to which they were entitled was that only which was possessed by Mr. Williams when action became necessary; and that if, with the full knowledge and approval of Dr. Rush, it had indeed become biased in the latter's lifetime, still their rights were derivable only through its exercise. It was his own property which the testator devised, and he was entitled to a free choice of agents for its management. The complainants had no right to demand of him the selection of an unwarped executor; for he could entertain, and, *at his own expense*, gratify, the most absurd prejudices.

Though Mr. Williams had been the owner of a large property in the neighborhood of Broad and Christian Streets, and had repeatedly expressed to Dr. Rush the most decided opinions as to its advantages, his appointment would not be open to impeachment. Those only who have no real merits in their defence, object to jurors with opinions; but, in ordinary life, men are chosen to perform high and responsible duties because they are known to entertain them, and to be likely to be influenced by them.

Wills are frequently prepared long before the death of those by whom they are made, and the chosen agents for their execution sometimes lack, at the time of the probate, the active intellectual ability which once characterized them; but no right to letters testamentary has ever been challenged for such cause. Testators may know, and yet be willing to incur, the risk, for, though they may see the ravages of time, they may prefer to risk their fortunes in the wreck of what was built well, with sound-hearted oak, rather than in the newest craft of ill-seasoned timber.

No harm can result, for men are sufficiently alive to their own interests, to change their agents, when the depreciation has reached a point at which the wreck has be-

come rotten. The person nominated as executor, is the man as he shall chance to be, with all his prejudices and imperfections, when the time for him to assume his office arrives.

If the will be not altered, we may presume that a testator, acquainted with the fact of a diminution of mental force or quality, was willing to waive all objections on that score.

The will, in regard to the person designated—his faculties and characteristics—speaks as of the time of the testator's decease. It is hardly necessary to argue a proposition so elementary, which is to be found in all the text books. The Master so reports on page 73. "A will speaks "from the death of the testator, and not from its date, un- "less its language, by fair construction, indicates the con- "trary intention." Canfield *vs.* Bostwick, 21 Conn. 550. The beneficiaries can demand nothing more than the honest exercise of such faculties.

We may more than doubt whether an executor, whose judgment, without the testator's knowledge had become warped, could be removed from his office; but if a testator, specially notified of the fact, refused to revoke the appointment, no court would listen patiently to a demand for his removal for that cause.

The courts have gone so far in sustaining such nominations, though the rights of *creditors*, for whom the testator was not entitled to speak, were involved, that only because of their unwillingness to presume that the testator's failure to revoke was deliberate and in view of the fact, have they appointed receivers, where long after the making of the will the executors had become bankrupts. Here, however, as the bias resulted from the testator's own act, he must certainly, against his own beneficiaries, be presumed to have intentionally and deliberately retained his executor.

"The Spiritual court cannot refuse to grant probate of a "will to a person appointed executor on account of his "poverty or insolvency." "The consequence is, the court

"of chancery assumed a new jurisdiction, and that court "will now restrain an insolvent or bankrupt executor, "and appoint a receiver. But if a person, known by the "testator to be a bankrupt or insolvent, be appointed an "executor by him, such person cannot, on the ground of "insolvency alone, be controlled by the appointment of a "Receiver." 1 Williams on Executors, 205, 206.

"The question simply is, whether it is fit the court should "now interfere for the protection of the property. *Its in-* "*terference can prejudice no right.* I must consider bank- "ruptcy as evidence of insolvency, and from the will being "made long before the Commission, though not altered "afterwards, I cannot satisfactorily infer that this testator "*had a deliberate intention* to entrust the arrangement of his "estate to an insolvent executor. I think it proper a re- "ceiver should be appointed." Langley *v.* Hawke, 5 Madd. 45.

In our own case of Sill *v.* McKnight, 7 W. & S. 244, it was held that a person found by an inquisition to be a habitual drunkard, was not thereby deprived of his power to perform the office of executor.

In Berry *v.* Hamilton, 12 B. Monr. 192, we find these emphatic declarations in favor of testamentary right: "Besides, to allow an inquisition of that sort would be to "deny to men a privilege which, for centuries, has been held "to be most sacred and dear, that of freely disposing of "their own property to whom they please, and of appoint- "ing trustees of their own choice to manage and control "it when they are no more, and whatever may be the "opinions of men as to the propriety or impropriety of a "particular appointment, the very basis and foundation of "the exercise of the right which society has granted to "its members, to appoint their representatives after their "death, is the special confidence reposed by the testator in "the appointee. And men, it seems to us, would care but "little for the high privilege of disposing of their estates "to their liking, if they are to be denied the right of se-

"lecting those who are to carry out and effectuate the be-
"nevolent purposes of their wills."

"Where a marriage is required to be by consent of
"trustees, and the trustees withhold consent for a corrupt
"motive, the Court of Chancery may interfere. And it
"has been contended, that, if the person whose consent
"is required is interested in refusing it, he must show a
"reason for his dissent. *If, however, the creator of a trust*
"*chooses to require the consent of a person whom he knows at*
"*the time to have an interest in refusing it, it is difficult to*
"*conceive an equity for interfering with his choice. And at*
"*all events no equity will arise if the trustee has meant to act*
"*honestly, though his decision may not be the one at which the*
"*court would have arrived.*" Adams on Equity, § 186.

Mr. Williams's promise has been likened to one given by a juror, to find a verdict in favor of a particular party; but the analogy is wanting. Such a promise by a juror would demonstrate his utter unfitness for the position. It would be corrupt and vicious, and of course should disqualify him. Had Mr. Williams, after the duty had vested and the rights of the beneficiaries had attached, made a promise not to perform it, he would have exposed himself to a grave suspicion of corruptness of motive. We cannot agree with the complainants in their argument that a promise to a stranger would have been no more objectionable than the one given to the testator. Mr. Williams would have known that no stranger could have rightly exacted such a promise, and could never have given it from proper motives. There would have been a taint of dishonesty which would have rendered all his subsequent acts suspicious.

In giving the promise he did, was Mr. Williams guilty of the commission of a crime and of one of such heinous nature that deprivation alone can be an adequate punishment? The learned judge at Nisi Prius refers to the cir-

cumstances under which it was made, in words which negative the idea that he deemed it a crime.

"He gave it," says he, "sitting by the bedside of his "dying friend and brother, recognizing the doctor's right "to control his own property, wishing to relieve his mind "from all doubt upon the subject that troubled him. His "promise was demanded of a brother-in-law to whom he "was about to entrust more than a million of dollars. I "say, about to entrust, for there was as yet time for him to "revoke the will and all of its trusts. He was unwilling "to pass all his vast estate into the hands of the defendant "upon the implied assurance that the Library building "would be located upon the lot which he had purchased "for its site."

Mr. Williams' promise was given to one who had a right to exact it. At the time, he did not know that the Doctor would not render it legally binding, by a revocation of his will. When it was made, no one had a right to object. It was not then wrong to give it. As Doctor Rush's death rendered it impossible for him to render the promise obligatory in law, he, Mr. Williams, recognizes the legal consequences of the failure, and asserts that he has not acted in pursuance of his promise, and that he would not, under the advice given as to his having no right to do so, but that he would rather resign than violate his duty by keeping it.

Mr. Williams gave the promise understandingly, not with a view to commit a fraud upon the power to select the most suitable site, but because he then believed that he could best execute it, by building on the lot selected, which, in his opinion, was the "most expedient." His judgment in its favor has been deliberately formed, after most anxious inquiry. It accorded with that of Dr. Rush, and he then believed that the beneficiaries, who had been previously consulted, were agreed.

By such a promise, so given, he can hardly have subjected himself to legal penalties.

III.

Equity will only interfere with the exercise of a power, where there is *mala-fides*, either in refusing to act at all, or in acting, with an intention to accomplish some object or end not contemplated by the power. There is no precedent for interference in a case like the present.

The extreme Chancery jurisdiction—relic of the old days of priestly arrogance and assumption—inconsistent with that full exercise of individual right allowed in Republican countries, has not with us, in its extravagant pretensions, been favored to the extent to which it has been countenanced in England. The savor of arbitrary, tyrannical interference, is not relished here. We have rejected, in the most decided manner, all such monstrous doctrines as the *cy pres*, and that of illusory appointments. If, then, as an offshoot of these condemned assumptions of authority, complainants could point out, in the English chancery books, a doctrine similar to that advanced by them, they would still be challenged to show the propriety of its being engrafted into our jurisprudence; but they have searched in vain, from the time when à Becket domineered over all private right, to the present day, for a precedent in point.

At the risk of wearying by repetition, we will extract from the reports and text-books, the grounds of equitable interference with discretionary powers.

"If the Legislature has intrusted the exercise of a power "to the sole judgment and discretion of a particular body "of individuals, no court is authorized to interfere with or "control that discretion, provided it is exercised in good "faith." Walker vs. Devereaux, 4 Paige 251.

"If a matter is left to the discretion of any individual or "body of men who are to decide according to their own "consciences and judgment, it would be absurd to say that "any other tribunal is to inquire into the grounds and rea- "sons on which they have decided, and whether they have "exercised their discretion properly." Tenterden in King vs. Mayor, 3 Barn. and Ad. 271.

"With the exercise of the Commissioners' judgment over the subject-matter confided to them, and within the scope of their authority, this court has nothing to do; so long as they act in good faith, and with pure and upright motives, I am not at liberty to interfere against their positive denial." Clarke *v.* Brooklyn Bank, 1 Edwd. Ch. 361. The Commissioners were authorized to distribute stock amongst such subscribers as they should deem most advantageous to the institution, and though they distributed it amongst themselves, they were not enjoined.

"I suppose the court thought itself at liberty to examine "whether the refusal proceeded from a vicious, corrupt, or "unreasonable cause. *A dangerous power*, which, however, "has always been assumed by the court." Lord Eldon in Clarke *v.* Parker, 19 Vesey 1.

In Bruner *v.* Storm, 1 Sandf. Ch. 358, where the necessity of a sale was to be left to the judgment of the executor, it was held that this could not be controlled if it was exercised in good faith.

In Re Beloved Wilkes, 3 Mac. & Gor. 441, where trustees were to appoint such a boy to a foundation out of one of four named parishes, as might be deemed eligible, they decided that there was no boy therein who was eligible and selected one who resided elsewhere. There had been a *cy pres* settlement in chancery which allowed them to select outside the prescribed limits under such circumstances. It was held that in the absence of proof that the trustees had exercised their discretion other than fairly and honestly, the court had no jurisdiction to interfere. "Discretion "must be exercised with an absence of indirect motives,

"with honesty of intention, and with a fair consideration of "the subject, and the duty of the court generally is, to see "that the discretion of the trustees had been thus exercised, "and not to deal with the correctness of the conclusions at "which they have arrived."

In our case we have proven the existence of all the above elements of a good execution of the power. It is admitted that Mr. Williams did consider the subject, that his motives were honest, and that his design was to exercise his judgment with a view to arriving at a correct conclusion. He denies that his intention was the fulfilment of his promise in violation of his duty. Complainants allege, however, that though the motive was right, the execution was imperfect by reason of the judgment being bad in quality.

"The amount to be allowed a *cestui que trust* was to be "determined by the trustees at their discretion; and if such "determination was made in good faith, and according to "the best judgment of the trustees, it is not subject to the "revision of this court." Hawes *v.* Hawes, 5 Cush. 454.

"Where trustees, with a discretion, act fairly and not "corruptly or partially, a court of justice would do too "much to control their acts." Lord Hardwicke in Att'y-Gen'l *v.* Harrow, 2 Vesey, 551.

In Keckewich *v.* Marker, 3 Mac. and Gor. 311, it was held that the court would protect the trustees "in the ex- "ercise of their power, there being an absence of all *mala* "*fides*, or of any wanton or unreasonable exercise of their "discretion." See cases collected in *note.*

"A corporation, as an individual, with such a power "over an estate devoted to charitable purposes, would, in "this court, be compelled to exercise that power, not "according to the discretion of this court, but not cor- "ruptly." Dummer *v.* Corporation, 14 Vesey, 252.

The courts may compel school directors to perform their duties, or restrain them when they transcend their powers; but they cannot interfere where they exercise their unques-

tionable powers unwisely. Wharton *v.* School Directors, 6 Wright, 358; S. P. Heard *v.* Directors, 9 Wright, 93.

"Unless the executors act in bad faith in the exercise of discretionary powers given to them by will, a court of equity will not control them." Chew *v.* Chew, 4 Casey, 17.

In Pulpress *v.* The Church, 12 Wr. 210, trustees were ordered to use the income of an estate for propagating the gospel amongst the colored people of two cities. On the principle that charity begins at home, they appropriated it to the support of their own pastor. Judge Strong, in delivering the opinion of the court, said:—

"It is a discretion which the complainants cannot con-
"trol, nor ought a court of equity to interfere with it, so
"long as it is honestly exercised. That would be to substi-
"tute the discretion of the court for that of those whose
"discretion was made the rule of application by the founder
"of the charity and to make the substitution without rea-
"son. It would destroy the trust rather than enforce it.
"The discretion to which the fund was committed may not
"have been most judiciously exercised, but it is not one of
"the conditions upon which the trustees hold that there
"shall be no mistake in judgment. If there were a posi-
"tive transgression, or if the fund were continuously ap-
"plied in such a manner as to lead to the conviction that
"the selfishness of the trustees rather than the design of the
"founder of the property had become the rule of appro-
"priation, or if it were manifest that their honest discre-
"tion was not exercised, it might become the duty of the
"court to interfere."

It was in view of all that had been decided by the court of which he had been so illustrious a member, that Judge Strong advised Mr. Williams:—(*a*)

"A court of equity does not interfere with a discretion
"reposed, except in cases of clear abuse, where the court

(*a*) Examiner's Report, page 117.

"can conclude that the donee of a power is acting in fraud "of it. But when, as in your case, the trustee acts in ac- "cordance with his own best judgment, and in so doing "follows the positive directions of the testator, it will be "altogether unprecedented for a court to interfere and "substitute its discretion for that invoked by the will."

Where, in Re Gresham Life Ins. Co., 21 Weekly Reporter, 188, it was alleged that a corporation had improperly refused to approve of transfers of shares, the Vice-Chancellor refused to interfere, saying: "Although I per- "fectly agree that if it can be shown affirmatively that "they are exercising their power capriciously and wantonly, "then there might be good ground for the court to inter- "fere."

"Unless it can be shown that the trustee, having the "discretion, exercises the trust corruptly or improperly, or "in a manner which is for the purpose, not of carrying "into effect the trust, but of defeating the purpose of the "trust, the court will not control or interfere with the ex- "ercise of the discretion." Wellesley *v.* Mornington, 2 Kay and Johns. 154.

"Where a power is given to trustees to do or not to do "a particular thing, at their discretion, the court have no "jurisdiction to lay a command or prohibition upon the "trustees as to the exercise of that discretion, provided "their conduct be *bonâ fide*, and their determination is not "influenced by improper motives." Lewin on Trusts (5th ed.), 439.

"And in such cases the court cannot decide upon the "propriety or impropriety of the refusal by the trustees "to give their assent, unless the refusal be shown to pro- "ceed from a vicious, corrupt, or unreasonable cause. And "it will rest with the other party to prove the existence of "an improper motive, and not with the trustees to show "a reason for their refusal." Hill on Trustees, 490.

"If the trustees exercise their discretionary powers in "good faith, and without fraud or collusion, the court can-

"not revise or control their discretion. The trustee can-
"not, however, exercise his discretion for any fraudu-
"lent, selfish, or improper purpose, nor can he refuse to
"exercise a discretionary power for such purpose; and if
"he acts or refuses to act upon such grounds, the court
"will interfere and give a remedy to the parties injured
"by the fraudulent act or refusal to act." Perry on Trusts, § 511.

This brings us to the discussion of a case, much relied on by the complainants, but which does not sustain their right to the relief they have prayed. On the contrary, it establishes principles utterly at variance with those which are necessary for them to maintain. We refer to the case of Topham *v.* Duke of Portland, reported in 31 Beavan 525; 1 De Gex, Jones & Smale, 517; 11 H. L. Cases, 32; 5 Chancery Appeal Cases, 40. We will analyze it, in order to show:—

Its facts.
The principles of law it decided.
Its want of similarity to our case.

As to the facts.

The old Duke of Portland conveyed certain property by deed of trust to his son, the present Duke, and authorized him to appoint it between two of his daughters, Harriet and Mary, or to appoint it to one in exclusion of the other, and subject to such restrictions as the donee of the power might think fit. Before this, it had come to the knowledge of the Duke that his youngest daughter, Lady Mary, had entertained proposals of marriage from Col. Topham. He did not think fit to approve of the match, and strongly expressed his opinion, threatening that he would, so far as he had the power, leave away everything from her. She promised not to marry in his lifetime. Nothing appears to have been said by the late Duke, before the creation of the power, as to the manner of its exercise. No previous

promise was given. The bill charged (5 Ch. Ap. 45), "After the execution of the deed the late Duke communicated to his children his intention that in the event of the plaintiff marrying Sir Wm. Topham the said income and annuity should be appointed, by the Duke of Portland for the time being, in such way as that one moiety should be received by Lady Harriet for her own benefit, and that the other moiety should be dealt with for the benefit of the plaintiff according to circumstances. The late Duke's children acceded to the wish so expressed, and agreed with him to carry into effect his intentions in reference thereto." It was also charged that the last appointment "was not made for the benefit of Lady Harriet, but for the purpose of carrying into effect an agreement that she had made with the donee, not to use more than one moiety, but to accumulate the other, in pursuance of which said appointments had been made, and that the donee executed the deeds, well knowing that Lady Harriet would act in conformity with such agreement."

After the late Duke's death, a marriage took place between Lady Mary and Col. Topham. The donee of the power then attempted to execute it, and appointed the whole fund nominally in favor of Lady Harriet, but only after he had communicated his father's wishes and subject to an arrangement that she should only use one moiety, and should reserve the other for her sister's benefit under certain contingencies. This moiety of the fund was carried to a separate account on the banker's books under the head "S," meaning sister, under a cotemporaneous order given by Lady Harriet, who was well aware that she was not to use it, and assented to the arrangement.

The power was really exercised only as to one moiety of the fund. In the House of Lords it was so held, but they introduced into their order the words "without prejudice to any question as to any future exercise of the power of appointment." The Duke, after all the litigation through three Chancery Courts, determined to try a new experiment

and again appointed the whole fund to Lady Harriet; but a moiety of the dividends was still retained in a separate account. The donee then swore that these deeds were executed for the sole benefit of Lady Harriet herself; that they were not made in pursuance of any agreement with her as was alleged, and that he had no expectation as to the manner in which she would use that fund. In cross-examination, as Lord Hatherley said, Lady Harriet admitted that she was still but a passive instrument to effect her brother's purpose, and there was no evidence to show that she had ever been released from that position, or that she considered herself so released.

The principles decided, the italics being our own, were as follows:—

A power to be validly executed must be executed without any indirect object. The donee of the power must "give the property "which is the subject of it, as property, to the person to whom he "affects to give it." Where it is otherwise given, it "is in equity "a fraudulent execution of the power, and the deed of appoint- "ment was wholly void." In H. L. Cas. 32, Lord St. Leonards said:—"*The parties have shown that it was not a real trans- "action, as such appointments must be in order to be valid*, but "that it was a transaction founded upon an intention to give "one-half absolutely and no more to Lady Harriet, and to make "her the instrument of tying up the other half for Lady Mary "so that they might give it to her or not, just as they thought "proper, afterwards," page 58.

"We were much pressed in the course of the argument, with "the danger and inconveniences that might be attendant upon "examining into the motives by which the donees of the power "may have been influenced in the exercise of them, and agree "that there would be both danger and inconvenience in such "examination, but it is one thing to examine into the purpose "with which an act is done, and another thing to examine into "the motives which led to this purpose. *What we have to do "in this case is to look to the purpose of the act which was done "and not to the motive which led to it. There is the same inten- "tion to put the appointed power under a control not authorized "by the power, that of Lady Harriet, the same accession on "her part to the purpose, the same resort to a mere contrivance "to effect its object, and the same absence of bona-fides.*" L. J. Turner, in 1 De. G. F. & J. 563.

"The evidence satisfies me that Lady Harriet Bentinck was not intended by the present Duke of Portland to take benefi-

"cially, the whole of what one of the four deeds purported to "appoint in her favor beneficially, and that *the main and govern-* "*ing view which he had in executing them was to enable the in-* "*come at least, of part of the property, to be appointed, em-* "*ployed, or withheld in a manner not warranted by either of* "*these powers.*" L. J. Bruce in same volume.

"It has been pressed upon me, more especially by the counsel "for the Duke, that I cannot decide in favor of the plaintiff "without holding, either, first, that the appointments already "made in favor of Lady Harriet, being tainted with illegality "by reason of the circumstances under which, and the purposes "for which they were made, it was impossible for the Duke to "make fresh appointments in her favor free from the same taint "of illegality; or, secondly, that I must discredit the state- "ments made by the Duke's answer and affidavit.

"I do not find myself under any obligation to accept either "alternative. As to the first, *without saying that it is impossi-* "*ble to set what was wrong right, and to make any subsequent* "*appointment free from the taint, I hold that it was necessary,* "*in order to set it right, that something should have been done* "*and said, clearly, unambiguously, and sufficiently, to discon-* "*nect the new appointment from the old understanding—from* "*the old purpose—from the old influences—which rendered the* "*old appointment illegal and void; and that merely executing* "*a new deed, and sending a dry, formal, official lawyer's letter* "*to the appointee, informing her of the new appointment, and* "*of the legal effect of the instrument, were not sufficient for* "*the purpose.*

"And, on the second point, I hold that every man must be "presumed to intend and mean that which is the natural and "necessary effect of his acts.

"Now, when the new deeds of appointment were made, things "stood thus:—

"The Duke had said in his answer in the former suit, this: "When the said deeds poll of the 19th of December, 1854, "were executed by me, I fully intended that from and after the "execution thereof the defendant, Lady Harriet Cavendish "Bentinck, should receive the whole of the dividends or in- "come and annuity thereby appointed to her: and I was aware "when and before such appointments were made that the said "defendant, Lady Harriet Cavendish Bentinck, would have, "and I intended that she should have the power, if she thought "fit to exercise it, of dealing with, and disposing of, the whole "of the dividends, yearly income, and annuity, as her own "moneys. But the said appointments were made in conse- "quence of the marriage of the plaintiff, and as the only mode "by which, as I was informed, the immediate and absolute "vesting in the plaintiff of a share of the dividends or income

"and annuity so appointed could be prevented; and I did "hope, when the said appointments were executed, that the "defendant, Lady Harriet Cavendish Bentinck, would not, on "receiving the said dividends, or income and annuity, so ap- "pointed, proceed at once to apply the whole thereof to her "own personal use and purposes, but as to a moiety thereof "would set apart the same as a fund to be dealt with in accor- "dance with the wish of the said late Duke, in the event (which "has occurred) of the plaintiff's marrying the defendant, Sir "William Topham."

"Lady Harriet knew that he had so said, and the Duke "knew that she knew it.

"In Lord Henry Bentinck's evidence in the former suit, "this apppears: 'When I say that I have heard and believe "that Lady Harriet also gave her consent to a similar pro- "posal, I mean that I heard it direct from Lady Harriet, last "July. She told me that she had agreed to carry out the "late Duke's wishes.' And the Duke knew, or must be taken "to have known, that she had so agreed.

"*Nothing was said or done before or at the time of the new "appointment to get rid of the effect of what had been so said "by the Duke, and agreed to by her. The new deeds, therefore, "must be read with reference to what had been so said and "agreed to; and they were made by an appointor who had "stated what his hope was, and what the wishes of the late "Duke were, to an appointee, who had agreed with the late "Duke to carry out those wishes. It is impossible to regard "any cesser of hope or wish, or any change of motive or wish, "if any such cesser or change there was, in the recesses of the "Duke's own mind, not communicated to the appointee; and "the new appointments must, in all courts of law, and for all "legal purposes, be considered to have been made to Lady "Harriet for the purpose of carrying out the late Duke's wishes, "and because she had agreed to carry out such wishes, and the "Duke must be held to have known that Lady Harriet would "of course receive such new appointment as bound, morally "and in honor, by such agreement.*" V. C. James, 5 Ch. Ap. Cas. 49, in deciding upon the second set of appointments. "I "think that Lord Justice Turner has clearly, and with his "usual accuracy, pointed out the true distinction between "motive and intention. The court cannot inquire into the "motive, but it can inquire into the intention or purpose. "And this is, indeed, the point on which I conceive our de- "cision of the present case must turn. If the Duke, truly "preferring Lady Harriet, either on the ground of her sister's "supposed disobedience to her father's wishes in her marriage, "or for any other reason, however capricious, intended simply "to give the property to her in preference to her sister, he is "by the power authorized to do so.

"If he, on the contrary, has not any such intention, but has "executed the instruments with the intent that Lady Harriet, "having the sole control of the fund, should abstain from deal- "ing with it as her own, and should accumulate one moiety of "it in order (according to events) either to dispose of it for "her sister's benefit, or to let it fall back according to the lim- "itations in default of appointment, then I think the distinc- "tion taken by Lord Justice Turner between intent and motive "would apply.

"The case before us is certainly subject to very considerable "difficulty. I give implicit credence, as I have before said, to "the statements of the appellants in their answers. I think "that nothing has passed between them beyond what is there "stated. But in order to appreciate the exact position of the "parties, we must, I think, have regard to all that passed "before.

"*It would be difficult, also, to hold that she had placed her-* "*self in such a position as to incapacitate her from accepting,* "*under any circumstances, a gift of the whole fund. I think* "*a valid appointment might have been made to her of that* "*fund;* but the real point for consideration is, whether or not, "though now conscious of her strict right at law to dispose of "the fund, the pressure of a moral obligation not to appropri- "ate more than one half of it to her own use, and to hold the "other half subject to the Duke's intentions, and for his pur- "poses, did not at the date of the last appointment, and does "not now weigh on her mind with such force as to convert her "into a mere passive instrument of the Duke's intentions, and "whether such her sense of moral obligation is not well known "to the Duke; and if so, whether he has taken any step what- "ever to discharge her from it, and restore her to complete "freedom of action?

"He does not say he has done so, and let us therefore look "to her own statements as to what her view of the case is, "and whether such view was not known to the Duke whilst "making the appointment; (His Lordship here read several "of the passages in Lady H. Bentinck's answer and cross- "examination set out in the statement above.)

"Can it be reasonably said that this lady stands in any "different position from that of Lord Henry, who, in one "branch of the case before the Lords Justices, had declared "himself to be a 'dummy' in the transactions in which he "was there concerned? Does not Lady Harriet describe her- "self as a mere instrument to carry into effect the will of the "Duke, whom she believes to be the depositary of her late "father's wishes on the subject? Is this difficulty removed by "the Duke's statement that there is no agreement, that he has "no hope or expectation on the subject of his sister's dealing

"with the moiety of the fund in dispute; and is it not neces-
"sary that she should be wholly freed from the notion that
"she is under any moral obligation whatever to observe the
"Duke's wishes?

"It is not for the court to point out how this may be done,
"after all that has passed. It is enough for the court to say
"that, assuming, as I think it is bound to do, that the Duke
"is aware of Lady Harriet's mind being made up to act ex-
"actly as he wishes her to do, and she declaring such to have
"always been her position, some evidence is necessary of a
"change of that purpose of the Duke, which was first evi-
"denced by the proceedings on the former appointment, and
"which has never been disavowed, because, as Mr. Amphlett
"well observed, the Duke does not desire to disavow his wishes
"upon the subject." Lord Hatherly, 5 Ch. Ap. 56, 57, 58.

"*In this state of circumstances no new appointment by the*
"*Duke of Portland—the same donee—in favor of Lady Har-*
"*riet Bentinck—the same appointee—can stand unless the*
"*effect and influence of this previous arrangement can be*
"*proved to have been so obliterated as to have put the donee of*
"*the power on the one hand, and the appointee on the other, in*
"*the same position as though no such arrangement had been*
"*brought about.*

"In my opinion, the burden of the proof requisite to sup-
"port a second appointment in such a case rests, and ought
"to rest, on the appointee. The reasons which, in the case
"of a dealing between a solicitor and a client, throw the onus
"of proof on the solicitor; between a trustee and a *cestui que*
"*trust*, on the trustee; between a parent and a child, on the
"parent; and in the class of cases to which Huguenin *v.*
"Baseley, 14 Ves. 273, belongs, on the persons seeking to
"sustain the gift; apply with equal force as between the
"appointee, in such a case as this, and the person entitled in
"default of appointment.

"*I am satisfied from Lady H. Bentinck's statements, in her*
"*answer and her cross-examination, that the original influence*
"*and obligation have existed, still exist, and are likely to*
"*exist.*

"I should have come to the same conclusion, had I thought
"that the onus of proof was on the plaintiff; but *I think it of*
"*importance to reiterate that where an appointment has been*
"*set aside by reason of what has taken place between the*
"*donee of a power and an appointee, a second appointment*
"*by the same donee to the same appointee, cannot be sustained*
"*otherwise than by clear proof on the part of the appointee,*
"*that the second appointment is perfectly free from the origi-*
"*nal taint which attached to the first.*" Giffard, L. J., 5 Ch.
Ap. 60, 61, 62.

Topham *v.* Duke of Portland is entirely unlike our case.

1. No one there claimed that the donee of the power was disqualified from acting by reason of his promise or agreement to accede to the donor's wishes; but all conceded his right to act.

2. It was alleged, however, that he did not intend to execute his power, but that his object was to carry out the donor's wishes. This illegal purpose was admitted, and the appointee was proven to be a mere "dummy" for their gratification.

3. The second deed, similar to the first, executed after a prolonged and expensive litigation bitterly contested, was held to be under the same influences as the first, because it appeared that no desire was felt, and that no effort had been made, to shake off the influence of the original arrangement.

4. The moral obligation which was objected to there was not that which resulted from the expression of the *donor's* wishes, but that which grew out of an illegal arrangement which had been entered into between the *donee* and the *appointee.*

5. The existence of this obligation rendered it utterly impossible that the power could be executed; for so long as the beneficiary felt unable to use more than a moiety of the fund, an appointment of the whole must be necessarily inoperative in part. With us, the moral obligation may exist, consistently with the exercise of the donee's judgment. If there be no conflict between the promise and the judgment the former is inoperative; if there be such conflict, then a resignation by the executor will save the promise without any violation of duty.

6. The donor's wishes were communicated to the donee *after* the power had vested and after his right in the fund had ceased. Dr. Rush's wishes were communicated before such vesting,—and whilst his right to revoke continued.

7. The wishes of the late Duke could only be gratified by the commission of a fraud upon the power with which

they were at variance. Dr. Rush's wish that the best site should be selected was not in fraud of, but in furtherance of, the power and its object.

8. It was conceded that a good appointment was possible, notwithstanding the promise and agreement, if a *bonâ fide* effort had been made to execute the power, free from their influence. The deed was condemned because it had been conclusively proven that similar ones had been made for a purpose not authorized by the power. The oath of the donee did not touch the real taint of the transaction, viz., the previously imposed and still existing, obligation upon the appointee.

9. The only effect of holding the appointment invalid was, to let the fund go amongst the children, but here the effect will be to confer upon a stranger, a power that the testator was willing to entrust only to his most intimate friend.

IV.

The proper remedy, if Mr. Williams, by reason of his promise, be disqualified from building on the lot selected, would be, to ascertain whether or not it is a proper site, and if not, to enjoin him against building thereon, which would still permit his execution of the power conferred upon him by the will.

We have shown that the complainants have sought to invent a new crime, but, like all other revolutionists, not content with this, they have also devised a barbarous and hitherto unheard-of punishment. With them there is no *locus penitentiæ*, but the Guillotine is immediately demanded —though, being needed for equitable purposes, they call

it a "Decree," and precede the punishment with what, with grim humor, they call a "prayer."

There is no pretence that the executor's judgment in *ordinary* cases is defective, but simply that it has been unduly biassed in favor of one particular locality. Would not every end be gained by forbidding him to build there? The testator's wishes could still be partially carried out. Under the decree as made, however, this will be impossible. Few physicians would recommend decapitation as a cure for the headache.

We have shown that there is no precedent for equitable interference in a case like this, and we may safely assert that there is no precedent for an exercise by a Master, of a discretion confided to another, clear of all accusation of fraud, and in full possession of his mental faculties.

In most of the cases cited by complainants, there was a provision over, in default of appointment. Here there is none. The power must be executed by some one. Can any one else exercise it as well as the executor? The testator thought not. Why shall not his wishes be respected?

Is the Master to decide upon his own judgment or upon the judgment of others as gathered by him from their testimony? In either event we may confidently predict that a lot will be chosen such as Dr. Rush would never have selected.

Mr. Williams still possesses the right to say how much shall be expended in the building. The purchase of the lot and the erection thereon of a building, can only be economically and intelligently made, by the same person. Who must yield if there be a misunderstanding between the master and the executor as to the respective amounts to be expended upon the purchase, and the building?

In any event we submit, the present decree must be *modified.*

V.

With some general remarks we will conclude our argument.

What we have said may not carry with it conviction, but it is impossible to ignore the fact that the interference asked for, and the reason assigned for the asking, are without precedent, and of most doubtful right. The dangers to be apprehended from an accession to the complainant's demands are great and certain.

A stranger will be put in the place of one to whom Dr. Rush's confidence was given, and whose judgment was required, to mould the vast bounty he intended to bestow. A cardinal desire of the testator, manifested in every page of the written will, must be utterly frustrated. In place of the harmony he hoped to secure, by placing the whole disposition under one control, will follow the confusion that must result from the counter-workings of two minds.

All this will be done, though the executor has been guilty of no fraud, but has honestly striven to do his whole duty, and believes that he has done it, to the prejudice of a great PUBLIC LIBRARY, at the instance of a private corporation which declined to thank the testator, which is undecided to-day as to whether it will or will not accept the bequest, which has refused to apply for such legislation as would enable it to carry out, to its full extent, the spirit of the will, and which may ultimately refuse to take.

The desire of Dr. Rush to secure the erection of a MONUMENT to his wife and her father will assuredly be lost sight of in the testimony of interested parties, by which the Master will be governed.

And why must all this be done? Simply because, in the

selection of a site for the library building, in the exercise of what he believes to be his unbiased judgment, the executor has chosen one that, in the opinion of the testator himself, was best adapted to his purposes. Ordinarily the court struggles hard to get at the intentions of a testator; but here, the executor must be disqualified because he is trying to execute them.

If there be a doubt, surely that doubt should not be given against the executor, when the sole consequence of a refusal to do so will be, that the anxious wishes of the donor will be gratified, and that a site will be adopted which the man most interested was so anxious to secure.

We earnestly urge upon the court that it will refuse to interfere with an executor who honestly exercises the best judgment he possesses, with the intent to execute the power as written in the will; that it will not condemn him without cause; and that it will not subvert the testator's written will, upon mere suspicion.

We summarize what we have urged as follows:—

1. There is no proof that Mr. Williams selected the Broad and Christian Street lot, under the influence of his promise.

2. The evidence, from his declarations long before litigation, that it was selected because in his judgment it was "most expedient," is overwhelming, and it is corroborated by the fact that he came to the same conclusion before any promise was given.

3. Mr. Williams is competent to testify as to his intention in selecting the site and as to the reasons which governed him.

4. A judgment as to the fitness of a site is not necessarily influenced by a promise to build nowhere else, especially where the party who gave the promise is aware of his duty to act independently of its influence, and would, by a resignation, if his judgment were adverse, keep his promise without violating his duty.

5. If Mr. Williams' judgment was warped by his promise, yet if he did, immediately upon the vesting of the power, do everything possible to shake off its influence, and did honestly exercise his own judgment to the best of his ability, no beneficiary has a right to ask more, nor to demand his removal because of his judgment being thus warped by what occurred prior to his appointment.

6. Mr. Williams did everything he possibly could to enable him to exercise his judgment, endeavored to exercise it to the best of his ability, and believes that he has chosen the most expedient site.

7. No *mala-fides* has been proven in the present case, such as will justify the interference of a court of equity.

8. Though Mr. Williams' judgment be warped as to this particular site, equity can do no more than enjoin him against its selection, and, subject to such injunction, must leave him to exercise his power.

9. The necessity or right of interference in the present case is too doubtful, and the violation of the testator's will, by granting the relief prayed for, will be too certain, to justify the maintenance of the present decree, especially in view of the well-considered opinion of the testator in favor of the site selected.

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GEORGE JUNKIN,
GEORGE W. WOODWARD,
For Appellant.

SUPREME COURT.

APPEAL OF HENRY J. WILLIAMS.

ADDITIONAL BRIEF OF APPELLANT.

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HENRY J. WILLIAMS, Appellant,	SUPREME COURT.
vs.	No. 1.
THE LIBRARY COMPANY OF PHILADELPHIA, Appellees.	July Term, 1871.
	IN EQUITY.

ADDITIONAL BRIEF OF APPELLANT.

The Law and the nomenclature of the Appellees are novel and unknown, heretofore, in any Court of Justice, Law Report, or Text-Book.

We are told that a trustee may "*bind his discretion*" in one of three ways: (1) "By corrupt motives;" (2) "By motives personal to himself;" (3) "By the highest and best motives;" and that the "discretion must be an existing one, unfettered and not bound;" and that the trustee, in this instance, has so bound his discretion in advance, and is incompetent to act at all, even in the expenditure of the money in the erection of the building when the site has been fixed.

The Testator himself, they say, has "bound" his own executor's discretion so irrevocably, that neither the executor's mind or will, nor the power of any court, or, indeed, any human power, can break the bonds; and the testator's chosen, life-long friend must be set aside, and the will be executed by a Master in Equity. To justify such a monstrous result, there ought to be very clear law and indisputable right.

The phrase or thought, that a trustee may "so bind that "discretion in advance, that when the occasion arises for "its exercise it shall be taken to be non-existent," has never been used, or suggested anywhere, at any time, by

any lawyer, or judge, or text-book writer. Such a possibility has never been spoken of by them, or ever invoked as a ground for equitable interference. They nowhere speak of a "discretion being bound." They nowhere ask if he has bound his discretion, or set him aside because he has not an "existing and unbound" discretion. The only question ever asked is, "Whether the trustee has exercised his discretion *bonâ fide* for the end designed, or is so doing?" If he has not, they set aside his action as a "fraud on the power," or restrain him from the improper exercise of the power, and command him to execute it for the purpose for which it was created. But until the exigencies of the present case required it, the idea or the doctrine, that a promise, no matter how corrupt the motives may have been, to exercise the discretion or power for purposes foreign to the true end for which the discretion or power was to be exercised, *ipso facto*, disqualified the trustee from ever acting, and that he must be set aside, never was conceived in human brain, or uttered by human lips, or written in words.

No case has been cited, or can be, for such a position. Nor can one be produced, where the Court set aside the improper exercise of the discretion or power, or restrained it, and then itself exercised the discretion or power through a Master. The cases of the females "starving for matrimony," alluded to by the Appellees, were those in which the trustees refused to act, not where they had a "fettered" or "bound" discretion.

We propose to justify these positions by critically examining all of the cases cited by the Appellees. In their argument, they vaguely speak of having *selected* some of the cases which support their doctrine, which has been well called "novel" and "subtle." We may safely assume that the *selection* embraces those cases which make most strongly for them; and if their strength is weakness (as we think will appear) how great is that weakness!

The true doctrine as to "a fraud upon the power" is no novelty. The earliest case cited is that of *Alleyn* v. *Belcher*, 1 Eden. 132 (1758).

Here was "a *power to his nephew to make a jointure on any woman he should thereafter marry for her life*, in bar of dower, with powers to provide for younger children," &c.

The power was executed in favor of the wife, but with an agreement that the wife should *only receive a part as an annuity for her own benefit*, and that *the residue should be applied in payment of the husband's debts.*

It was held that this was "a fraud upon the power," and the execution was set aside except so far as related to the annuity. Lord Keeper Henley says: "The whole "transaction is an agreement between husband and wife. "No point is better established than that a person having "a power must execute it *bonâ fidê for the end designed*, "otherwise it is corrupt and void. The power here was "intended for a jointure, *not to pay the husband's debts.* "The motive that induced Edmund to execute it was *not a provision for his wife.*"

In other words, there was a fraudulent agreement and design to pervert the use of the power, and give the property for an entirely different purpose than that for which the power was conferred. There was no intention, *bonâ fidê*, to execute the power *for the end designed;* but, on the contrary, it was used for an end that was *not designed.* And this was clearly proved. Both in the argument of counsel and in the opinion of the Court, the case is put upon the distinct ground of fraud, the *absence of all intention* to execute the power *bonâ fidê.* It is nowhere said or intimated that the agreement, *ipso facto*, disqualified. It was the actual exercise of the power under the fraudulent agreement to accomplish an end foreign to its purpose which vitiated the execution.

McQueen v. *Farquhar*, 11 Vesey, 467, 480 (1804). Though a party is not permitted to execute a power for his own benefit, as against other interests, the Court will

not act against the title upon a mere suspicion that a transaction was of that nature; appearing fair both upon the instruments and the abstracts; namely, a purchase under the execution of a power of appointment by a father, subject to estates for life in him and his wife, in favor of their son, all three joining, and receiving the money, the fair value, which is presumed to be received according to their interests in the estate, and the purchaser not being bound to see to the application.

It is in this case Lord Eldon says: "It is truly said, "this Court will not permit a power *for his own benefit.* "In Lord Sandwich's case, a father, having a power of "appointment, and *thinking one of his children was in a* "*consumption*, appointed in favor of that child, and the "Court was of opinion that the *purpose was to take the* "*chance of getting the money as administrator of that child.*" He then proceeds to say that he cannot, in order to bring the present case within the principle of the act, proceed upon mere suspicion.

Note 5 to this case is as follows: "That an appoint- "ment, which, however ingeniously devised, is, in fact, "*a scheme corruptly concocted to further the selfish interest of* "*the party to whom the power of appointment is given, will* "*never be allowed to stand.* See note 4 to Hockley *v.* "Manley, 1. V. 143; and note 4 to Boyle *v.* The Bishop of "Peterborough, 1. V. 299."

Here we have the same principle. The party must, in good faith, use the power for the *purpose designed*, and not for his own benefit. But it is not intimated that the fraudulent purpose itself disqualified. It was the *acting* under it and carrying it out which was the fraud on the power.

Dummer v. *The Corporation of Chippenham*, 14 Vez. 245 (1807). The appointment of a schoolmaster was in the bailiff, and the majority of the burgesses of the corporation. The complainant was elected and held the office for many years. By a resolution adopted by a majority, he

was displaced on the alleged ground that he was unable to fulfil the duties by reason of bodily disease and the infirmities of age. He averred that this was not the true reason, which was because of resentment and party spirit against him, because of a vote he had given, and that the house he occupied might be given to another who would vote as the majority desired.

Five of the defendants demurred to the bill. The demurrer was overruled.

Lord Eldon says (251): "The principle upon which "this case was argued goes this length; that, if it could "be made out by discovery from each of these persons, "supposing no combination in the answer, that they "turned out the schoolmaster, *not upon any well-founded* "*opinion*, but *influenced by a corrupt motive*, that discovery "should be shut out." Again (252): "A corporation, as "an individual, with such a power over an estate devoted "to charitable purposes, would, in this court, be compelled "to exercise that power, *not according to the discretion of* "*the court, but not corruptly.* A trustee of another de- "scription, a corporation, or an individual, cannot be per- "mitted to *act corruptly in the execution of the trust.*" Again (253): "Then these five individuals, in the execution of "their *corrupt purpose*, found the means (for that is the "substance) of making the corporation the instrument of "dismissing him."

The true principle is again stated. The Court is not to exercise the discretion. The trustees must do it, but "not corruptly." They must act upon a "well-founded opinion." There is no intimation that even this corrupt agreement disqualified the burgesses from acting in the premises. And Lord Eldon more than intimates, that the Court would not undertake to choose the schoolmaster.

Daubeny v. *Cockburn*, 1 Merivale, 624 (1816). Voluntary settlement in trust for such one or more of his children as the settlor shall appoint. Appointment to one child exclusively, upon *a secret understanding*, that that child

shall reassign a part of the fund to or in favor of a stranger. This is a fraud upon the settlement, and void *in toto*.

Sir William Grant so decided on the authority of the cases of *Lane* v. *Page*, Amb. 233 ; and *Alleyn* v. *Belcher*, 1 Eden. 132.

The purpose of the power was to benefit all the children. Here the agreement was not to do this, but to benefit an entire stranger. There was an actual carrying out of this corrupt agreement to defeat the very purpose of the power.

Campbell v. *Home*, 1 Younge and Collyer, 664 (1842). Where a married woman who had four children, executed a power of appointment in favor of one to the exclusion of the others, the court refused to set it aside. Vice Chancellor Shadwell says : "It is quite true that this, as "well as every other transaction, may be affected by "some possible fraud, or mistake, or misconduct; but "where is the fraud, or mistake, or the misconduct here?" "If it can even be shown that this deed was executed from "improper motives, those who are interested in doing so can apply to set it aside."

The same principles are recognized. It must be proved that the party is *actually doing*, or *has done*, what will defeat the end designed. It is not enough to suspect or allege, it must be established that there is not good faith.

Beloved Wilkes's Charity, 20 Law J. Rep. (N.S.) Chancery, 588 ; 7 E. L. and E. Rep. 73 ; 3 McNaughton and Gordon, 440, (1851). This was real estate left to trustees, the rents of which were to be appropriated to the maintenance and education of a lad at Oxford, in order to make him a minister of the Church of England. The incumbents of certain parishes and their successors were to select such lad as the trustees should think eligible out of these parishes, but if none therein were eligible, then from any parish in England or Wales.

The trustees selected J., a stranger to these parishes. The father of G., who lived in one of the parishes, prayed for a new election on the ground that his son was eligible and had been rejected because the trustees "had laid down "an arbitrary exclusive rule, namely, that the sons of "farmers were not persons in a station of life fit to be the "objects of this charity." This was denied, and the court say that there was no proof of it.

Lord Chancellor Truro says (83): "In all such cases "there must be an entire absence of indirect motive; there "must be *honesty of intention*, and there must be *fair con-* "*sideration of the subject*, and if the trustees do judge and "do fairly consider, it is to *their* discretion the execution "of the trust is confided, and the duty of supervision on "the part of the court, is as to *the honesty and integrity* and "*fairness* with which they deliberate, and not with respect "to the accuracy of their conclusion."

This is the whole law of the case. As to its correctness there cannot be a doubt. But what color does it give to the extravagant and novel position assumed in the case before the Court?

It is confessed, that with Mr. Williams there is no "indirect motive"—that he is honestly endeavoring to exercise his discretion. His answer and his ten reasons for his action, show that he has given a "fair considera- "tion of the subject:" and such being the fact, it is to his "discretion the execution of the trust is confided." The duty of the Court is only "as to the honesty, and integrity, "and fairness with which he deliberates." These have been all found by the Master and the Judge at Nisi Prius.

There is no suggestion by Counsel or Court in Beloved Wilkes's case, that, because the parties who had made the selection had acted upon a false or mistaken notion, *ipso facto* they became disqualified and were forever after incompetent to act, and as the Appellees say of Mr. Williams, "a Court of Equity cannot absolve them!"

The father of G. did not ask that the Court through a

Master should select. He asked that their selection should be set aside; and that they, being admonished by the Court that their peculiar notion about farmers' sons was wrong and must be disregarded, should actually disregard this notion and again make their selection.

Precisely in this way Judge Strong advised Mr. Williams, and he swears that he did exercise his discretion, irrespective of his promise.

Wellesley v. *Earl of Mornington*, 1 Kay & Johnson 143, (1855). Under marriage settlement made in 1812, previous to marriage, the Earl of Mornington had a power of appointment among the children. The mother died. There were three children, viz., Viscount Wellesley, James Wellesley, and the plaintiff.

On November 2, 1850, the Earl appointed £27,000 to James and £9000 to the plaintiff.

On October 23, 1851, James died intestate and unmarried, and letters of administration on his estate were granted to the Earl.

The bill was filed to set aside the appointment, and charged, that before the date of the execution of the deeds "it was well known to the Earl, as the fact was, that "James's life had been and was despaired of by his medical "advisers and attendants, and that his recovery was hope-"less; that the deeds were intended to be, as they were, "in fact, concealed until after the death, which was then "shortly expected, of James; and that they were executed "by the Earl for his own benefit and advantage, and in "fraud of the power, and *not for the benefit or advantage* or "*with any regard* to the interests of his younger children, "or either of them."

"The Earl by his answers put in issue all the matters "charged in the bill, and stated as his motive for executing "the deed of November, 1850, that, having reason to fear "that James might continue in an infirm state of mind "and body, he was anxious that such a provision should "be made for him as would enable him to live in comfort;

"and that he had the best reason to believe that the "plaintiff would be well provided for, independently of "the portion moneys; and he submitted, that, in executing "the deeds, he exercised a discretion which he was entitled "to exercise under his marriage settlement."

Vice-Chancellor S. W. Page Wood says (154): "The "case, therefore, must certainly be rested—and it is painful "that it should be so rested—upon the *ground of fraud* "on the part of the parent: I mean not simply upon the "ground of the appointments not being for the child's "benefit, but upon the *broad ground* that the parent ex- "ecuted those appointments, *not with any intention* of "benefiting the object of the power, but to *secure to him- "self* the benefit that might result from the appointments "so executed." (157): "The case must rest on as high "ground as that, and I put it as high as that. I ask, can "anybody, if this case were before a jury, suppose that the "defence which is made would be a satisfactory answer, "with reference to an appointment to a person in this "imbecile condition—a lunatic who was in a weak and "infirm state of health, brought on by his excesses? The "father had been informed throughout that the weakness "and infirmity of his son's health were so occasioned; and "having made due inquiries at two previous periods as to "the state of his health, he makes no inquiry at the time "when he is about to execute these deeds. Can I believe, "or will anybody believe, that this was done for the pur- "pose of paying the supposed amount of debts, £3000 or "£4000, when we find an appointment made of £27,000, "and when one observes (which is of considerable import- "ance) the course which was taken after the appointment "was made."

He then adverts to the concealment of the deeds until after the death, their non-production until the Earl had found that James had left no will; and also to the fact, that the Earl had said in his testimony, that he heard James had, before his lunacy, made a will which gave all

his estate to his mistress. "I confess that it is one of the "most extraordinary statements in this case, that Lord "Mornington, believing his son's debts to be only £3000, "did, to the detriment of his daughter, Lady Victoria, "appoint to him in this state £27,000, in the belief that "the surplus would go to a woman with whom his son "had been living. Anything more monstrous and in- "credible was never stated in a court of justice!"

(See also the quotation on Appellees' Paper-Book, p. 9.)

Here we have again the enunciation of the same old principle, that the power must be exercised for the end designed. The end was the benefit of the children. The proofs were overwhelming that the end for which this heartless, corrupt, and vile father executed his power was *his own benefit*, not his children's.

It is true, he denied it under oath. But his oath was *absolutely overthrown* by the evidence. His own account of his reasons for his action was absurd and "monstrous." It was a case which fairly reeked with the most shameful and barefaced fraud.

And we are told, that, because the Court went behind Lord Mornington's oath and convicted him of perjury, therefore this Court may go behind Mr. Williams's oath and convict him—of perjury? Oh no! not that, but of imbecility! He cannot know whether the Broad and Christian Street lot is the best place to put Dr. Rush's Library on or not, because he promised to put it there! Lord Mornington's case and that of Mr. Williams are as dissimilar as night and day.

Marsden's Trust, 4 Drewry 594 (1859). A married woman, having a power of appointment of a fund among her children, appointed the whole fund to her eldest daughter, in order that thereout the daughter should benefit her father, but the daughter was not informed of her mother's intention until after her mother's death. The appointment was held *void*.

"It appeared that Mrs. Martin, wishing to make a

"better provision for Mr. Martin than was contained in "their marriage settlement, in case of his surviving her, it "was proposed that she should make her will in the exer- "cise of the power of appointment contained in the in- "denture of 14 October, 1836, and should leave the whole "property to her eldest daughter, Isabel C. Martin, on con- "dition that she should, on attaining her majority, make "over to her father one-half of the property, and give "him a life interest in the other half. Having been "advised that this arrangement could not be carried out, "Mrs. Martin, on the 24 July, 1857, executed a deed "poll, appointing the Canal shares to her eldest daughter "Isabel C. Martin, absolutely."

"It appeared that the intention of Mr. and Mrs. Martin "was, that Mr. Martin should, after the death of Mrs. "Martin, inform the daughter of the object to effect "which the appointment had been exercised in her favor, "leaving it in the discretion of the daughter to carry out "her mother's intention. It was admitted that Isabel C. "Martin was entirely ignorant of the execution of the "appointment in her favor till after the death of Mrs. "Martin."

Again we have the old principle re-affirmed. There must be a *bonâ fidé* intention to accomplish the end designed. Here the object of the power was the division of the property among the children according to their several needs as determined by the discretion of the mother. *Confessedly*, she exercised no discretion at all, and appointed, *not* for the benefit of the children, but of her husband. This was not the purpose of the power, and was in fraud of it. But there is no talk of a "discretion being bound," or a "free discretion," or a "fettered discretion," or any of the like phrases which sparkle in the paper-book of the Appellees. The Vice-Chancellor says: "defeating the purpose of the trust;" "it has been exercised in such a way as to defeat the purpose for which it was given." We invoke the careful consideration of the

Court to the opinion of the Vice-Chancellor as quoted on the Appellees' paper-book, pages 11 to 13. The real doctrine is there stated. But it contains no such subtile notions as they seek now to create and graft on to the original law.

Arnold v. *Hardwick*, 7 Simons 343. If the donee of a power appoints the fund to one of the objects of the power, under an understanding that the latter is to lend the fund to the former, although on good security, the appointment is bad.

Vice-Chancellor Shadwell says: "If there was any "antecedent bargain between the father and his sons, "that, if the appointment were made, the fund should be "lent to the father, the appointment would not be good."

The object of the father's appointment was not the benefit of the children, but that he might have the use of the money. There was no *bonâ fidê* exercise of the power at all.

Jackson v. *Jackson*, Drury Irish. Ch. 91. A father appointed to one child with an agreement that he himself should have a part of the fund.

Here again there was no exercise of discretion at all with reference to the objects who were to be benefited. But, on the contrary, a corrupt bargain to alienate a portion of the fund to one for whose benefit it was not given. It was not a "fettered" discretion, or a "trammelled" discretion, or a "bound" discretion. It was bad faith. It was defeating the purpose of the power.

These are all the cases cited by the Appellees, except the Duke of Portland's Case, which will be considered presently.

In each case where the Court interfered, it was because there had been no *bonâ fidê* exercise of the discretion or power for the end for which it had been given, or there was distinct proof of fraud. *And in no one of them did the*

Court venture to exercise the power or discretion itself. Nor did they ever intimate that the *mere unlawful promise*, or *understanding*, or *purpose* disqualified. It was because the party *acted* on the unlawful promise, understanding, or purpose. In other words, the true and only inquiry was, "Did the party exercise the power or discretion *bonâ fidê*, honestly, with a sincere desire to fulfil the purposes of the power or discretion—the end for which it was given?"

No one of these cases gives even the faintest color to the peculiar views of the Appellees. No one of them says that the apppointor is to have a *free*, *untrammelled*, *unbiased*, *unfettered*, *blank* mind. An honest intention to accomplish the purposes designed by the power is all that it required. It is confessed, by the Appellees, because incontestably proved, that Mr. Williams has this good quality.

Topham v. *Portland*, 31 Beavan 525; 11 House Lords 32; De Gex, Jones & Smith 516; 5 Law Rep. Eq. Ap. 49. Does this case introduce any new rule? Not in the slightest. It is, however, the *one* case and the *solitary* one upon which the Appellees rely. They confess that Mr. Williams does not come under the ban of their first two "ways by which a discretion may be bound," viz., (1) "corrupt motives; (2) motives personal to himself." He is disqualified or bound by (3) "the highest and best motives!" And on page 15 of their argument, under this last head, the Duke of Portland's Case alone furnishes the law. It stands the only beacon light on the shores of the Law's wide sea, to warn trustees actuated by "the highest and best motives imaginable," that they may be shipwrecked, and become castaways from the vessel intrusted to their care.

We aver that it does not assert or contain a single new principle—that neither in the argument of counsel, nor in the many opinions of the Court, is there a syllable about a "discretion being bound," or of a "free, untrammelled," "unbiased" discretion; or that an unlawful promise, or understanding, or purpose, *ipso facto*, disqualifies; or that,

such unlawful promise or understanding once having been discovered and confessed, the appointor thereby became so tainted that he never could afterwards act, and must be restrained, and the Court must act for him through a Master.

The old principle which decided the case was precisely the same, no more, no less, recognized by Lord Keeper Henley in 1758, who then said "no point was better established," viz., "that a person having a power must execute it *bonâ fidê* for the end designed." The end designed in the Duke of Portland's Case was, to distribute the fund between Lady Mary and Lady Harriet, in the exercise of a wise discretion, according to their respective wants and circumstances at the time of the use of the power. This, and this alone, was the purpose, the end, the object of the power as expressed in the deed creating it.

Did the second Duke of Portland do this? No. "The appointment of the two sums of £16,000 were made to him (Lord Henry) on the faith that Lord Henry would act in the matter as his father desired." He confessed that he had promised, before the creation of the power (see 31 Beav. page 536), his father, that he would use his power of appointment so as to prevent the marriage of Lady Mary and Colonel Topham, that he was a mere "dummy" in making the appointment, and that Lady Harriet agreed to take but half of the fund for herself, and hold the other half for Lady Mary, so as to carry out the promise made by her brother to her father in order to prevent her marriage to Col. Topham. The Master of the Rolls (Romilly) says (31 Beav. 536): "The only question "respecting which any reasonable doubt can be enter- "tained is, whether the appointment was or was not "wholly void, on the ground that it was made to effect "an object foreign to the purpose for which the power "was created?" He held the object was foreign to the purpose for which the power was created; but in no place does he so much as intimate, that the *mere promise* and *understanding* between father and son *in itself* disqualified.

It was the *acting on it*, and his *confessing he had exercised no discretion*, but was a mere "dummy," which vitiated the appointment.

The Lords Justices on Appeal (De Gex, Jones & Smith, 517) held precisely the same views. "The *motive* with which the power was exercised may not be regarded, *the purpose may*."

On appeal to the House of Lords (11 House of Lords' Cases, 32) Lord Chancellor Westbury says (53): "The ap- "pointor shall at the time of the exercise of that power, "and for any purpose for which it is used, act with *good* "*faith and sincerity*, and with an entire and single view to "the *real purpose and object of the power*, and not for the "purpose of accomplishing or carrying into effect any bye "or sinister object which he may desire to effect in the ex- "ercise of the power." "The *faithful, sincere, just and honest exercise of the power*." Lord Cranworth and Lord St. Leonard's opinions were to the same effect.

But there was no talk of the discretion being "bound," or "trammelled," or the like; or that the appointments were set aside *because* of the promise; or that the promise by the Duke to his father itself disqualified him from exercising the power. On the contrary, whilst setting aside the appointments, they expressly modified the decree "in "order to prevent the decree being used hereafter as an "argument that will bar any attempt to exercise the power "by the Duke." When Lord Westbury suggested this, it never occurred to the Attorney-General (Sir Roundell Palmer), to reply that Lord Henry's "*discretion was bound*," and that so firmly, that neither he nor any Court of Equity could absolve him from the bond, and therefore it was "idiotic" to make such alteration in the decree! It was reserved for the Counsel of the Appellees to discover this novel and subtile doctrine.

On the contrary, the learned Judges all recognized his *right and power to act*, although his discretion was "bound," and "fettered," and "trammelled," by his promise to his

father, welded all the stronger in the heats of an angry and protracted litigation. And he did exercise the power, *unquestioned on this ground.* And when new bills were filed to set aside this new exercise of his "bound" and "fettered" discretion, it never occurred to the distinguished counsel for Lady Mary to take the novel ground of the Appellees, that she was entitled to the *free* and *untrammelled* judgment of the Duke; that he must be as unbiassed as a *judge* or *juror*, and not being such he all along had been and still was disqualified to exercise the power; or that Lady Harriet having once been a party to the family compact to "starve for matrimony" Lady Mary, she too was so tainted with this original sin that there could be no redemption for her either from its withering power!

No, they neither put it in the bill, nor ventilated such an extraordinary doctrine in their arguments. Nor did the learned Judges who decided it. On the contrary, the latter distinctly recognized the Duke's *right* and *power* to appoint, and Lady Harriet's to receive and hold. They said, you could have appointed, and Lady Harriet could have received; but you did not do anything to remove the transaction from its original position. "I think a valid appointment might have been made to her of that fund." Lady Harriet's testimony showed plainly, that she considered herself still absolutely controlled by the old family arrangement.

Lord Hatherly says (5 Ch. App. 57): "If the Duke, "truly preferring Lady Harriet, either on the ground of "her sister's supposed disobedience to her father's wishes "in her marriage, or for any other reason, however capri- "cious, intended simply to give the property to her in pre- "ference to her sister, *he is by the powers authorized to do* "*so.*"

Vice Ch. James says (5 Ch. App. 49–50): "I hold that it "was necessary in order to set it right, that something "should have been done and said, clearly, unambiguously, "and sufficiently, to disconnect the new appointment

"from the old understanding—from the old purpose—
"from the old influences—which rendered the old appoint-
"ment illegal and void, and that merely executing a new
"deed, sending a dry, formal, official, lawyer's letter to the
"appointee, informing her of the new appointment, and of
"the legal effect of the instrument, were not sufficient for
"the purpose."

He also says (page 50): "Nothing was said or done be-
"fore or at the time of the new appointment, to get rid of
"the effect of what had been so said by the Duke, and
"agreed to by her."

Lord Hatherly (page 57–8) says: "Has he taken any step
"whatever to discharge her from it (her sense of moral
"obligation) and restore her to complete freedom of action?
"He does not say he has done so."

And on page 58, he continues: "Does not Lady Har-
"riet describe herself as a mere instrument to carry into
"effect the will of the Duke, whom she believed to be the
"depositary of her late father's wishes on the subject? Is
"this difficulty removed by the Duke's statement that
"there is no agreement, that he has no hope or expecta-
"tion on the subject of his sister's dealing with the moiety
"of the fund in dispute; and is it not necessary that she
"should be wholly freed from the notion that she is under
"any moral obligation whatever to observe the Duke's
"wishes? It is not for the Court to point out *how* this
"may be done, after all that has passed?" But implying
that it *could* be done.

L. J. Giffard says (page 60): "In this state of circum-
"stances, no new appointment by the Duke of Portland—
"the same donee—in favor of Lady Harriet Bentinck—
"the same appointee—can stand unless the effect and in-
"fluence of this previous arrangement can be proved to
"have been so obliterated as to have put the donee of the
"power on the one hand and the appointee on the other in
"the same position as though no such arrangement had
"been brought about."

And on page 62: "Where an appointment has been set "aside by reason of what has taken place between the "donee of a power and an appointee, a second appointment "by the same donee to the same appointee cannot be sus- "tained otherwise than by clear proof on the part of the "appointee that the second appointment is perfectly free "from the original taint which attached to the first."

Is not all this strange language for Judges to use, if they held the notions of the Appellees, that, once having promised, or being under a moral obligation, there could thereafter be no possible cleansing from the taint? the disqualification became eternal, and could have no absolution! They held to no such concentration of wisdom!

Suppose Lord Henry had gone to Lady Harriet after the first appointments had been set aside, had taken his counsel and hers with him, and had told her just what the Judges had said—that, whilst he would like very much to have carried out his father's wishes, he found that neither he nor she could do so by means of this power—that in the exercise of his discretion for the ten reasons he then enumerated, he preferred her to her sister, and he meant to give her the whole fund—that she was to blot out from her mind all that had occurred, and use the money just as she in her own free judgment chose, irrespective of her father's wishes and his—and that then he had made the appointment of the whole fund to Lady Harriet, and she agreed to this; and that when examined under oath, he and she had testified so truthfully, that even their opponents had been forced to say they believed they had acted honestly:—can there be a doubt, but that his second appointment would have been sustained as good?

Precisely this has been done in Mr. Williams' case. Judge Strong advised him thus: "In the exercise of the "discretion reposed in you by that instrument (the will), "you may regard Dr. Rush's views and wishes orally ex- "pressed; but after all *your* judgment, however it may be

" made up, must be your guide in matters left to your dis-
" cretion."

Mr. Williams swears: " After Dr. Rush's death, I was
" obliged, of course, in order to assume the duties of exe-
" cutor, to take the ordinary oath, which obliged me to
" carry out the directions of the will. This was a legal,
" as well as a moral obligation: and under it, I did then,
" and have done ever since, considered the question as to
" the site of the Library, entirely irrespective of any
" promise made to Dr. Rush, or of any wish expressed by
" him, and I became then, and have continued ever since,
" convinced, according to the best judgment I am able to
" form, that this lot possesses advantages which are at-
" tainable in no other with which I am acquainted." " I
" believe that if I had made no promise, and had not known
" the wishes of Dr. Rush, my judgment would have been
" the same."

Neither Lady Harriet nor the Duke of Portland so swore. She still remained a "*passive*" instrument to carry out the Duke's purpose, which was foreign to the end of the power.

Lord Hatherly says (p. 58–59): "*I rely on her (Lady Harriet) present evidence, on cross-examination, that she is still a passive instrument to effect her brother's purpose.*"

L. J. Giffard (61) says: " I am satisfied from Lady
" H. Bentinck's statements in her answer and her cross-
" examination that the original influence and obligation
" have existed, still exist, and are likely to exist."

If the Duke of Portland had acted as Mr. Williams has, Lady Mary's " Counsel would not have been even listened to."

This review of *all* the cases cited and relied upon by the Appellees shows, that there is no basis anywhere for their remarkable theory about a "*bound* discretion," an "*unfettered*," "*unbiased*" discretion, that the trustee must be like a Judge or Juror. It is wholly unwarranted by any case;

and we invoke the careful consideration of the Court before it commits itself to these new dogmas.

The great and only question is one of fact, whether Mr. Williams has *bonâ fidé*, honestly exercised his *own discretion*, under a broad and thoughtful foresight, in the selection of the lot at Broad and Christian Streets? The evidence establishes this, as we have already shown in our former Brief; and thus sustains the Answer, which, on this point is responsive to the Bill, and is not contradicted by any evidence whatever.

IN THE

SUPREME COURT OF PENNSYLVANIA,

FOR THE

EASTERN DISTRICT.

HENRY J. WILLIAMS, Appellant,

vs.

THE LIBRARY COMPANY OF PHILADELPHIA,
Appellees.

BRIEF SUBMITTED ON BEHALF OF APPELLANT

by GEO. W. WOODWARD,
of Counsel for Appellant.

COLLINS, PRINTER, 705 JAYNE STREET.

In Re the Appeal of Henry J. Williams.

SUPPLEMENTAL BRIEF IN BEHALF OF APPELLANT.

Mr. Williams, duly qualified as executor of Dr. Rush's will, was proceeding to execute it according to its very terms when arrested by the injunction of a Court of Equity.

The Legislature have placed testamentary trusts under the special supervision of the Orphans' Court by several acts of Assembly subsequent to those conferring equity powers in general upon our courts. (See Purdon 308.)

If Mr. Williams was neglecting or mismanaging the trusts committed to him, the remedy of any injured party was in the Orphans' Court, and because specially lodged there, it cannot be sought elsewhere.(*a*)

But no delinquency and no mismanagement have been alleged. The jurisdiction of the Orphans' Court, necessarily exclusive in the premises, has not been invoked, because no party has appeared to complain against Mr. Williams.

The Library Company of Philadelphia, a legatee in the will of Dr. Rush, having only a remote and contingent interest in his estate, is the party that passes by the Orphans' Court and goes into the Supreme Court upon its equity side to complain of the site which Mr. Williams had selected for the library building which the will enjoined him to erect.

The gravamen of the complaint against the site is to be found in the XXth section of the bill, and it is, that it would be inconvenient to both the directors and the share-

(*a*) Chew *v.* Chew, 4 Casey 17.

holders—"*not less than half a mile south of their usual places of resort*," and, worse still, "*more than a mile out of the line of travel of the large majority using, or entitled to use the library.*"

The inconvenience of having to go from half a mile to a mile out of the beaten track of their lives to obtain the knowledge purchased for them by the munificence of the testator, is the wrong and injury of which the plaintiffs complain. The executor should have employed the testator's wealth to bring this knowledge home to the plaintiffs, or to have scattered it along their frequented paths. It is for this the ear of a court of equity is vexed—for this the statutes and the Orphans' Court are ignored—for this it is to be referred to a Master to inquire and report what would be a fit and proper location for the building, for this the select and faithful executor of the will is to be restrained by injunction "preliminary until the hearing, and perpetual thereafter," from executing the will.

On the face of this extraordinary bill two things are admitted, one a matter of fact, the other a matter of law.

1st. It is admitted that the selection of a site is committed to the discretion of the executor—the language of the will is (2d clause of the 2d codicil), "I authorize and allow my executor, under a broad and thoughtful foresight, to increase the size of the lot, *and select any situation he may deem most expedient*, without regard to any provision of my will or codicils."

"He may deem expedient." Who? Henry J. Williams. Whatever lot Henry J. Williams may deem most expedient, shall be the site of the library building. Such is the will. The plaintiffs admit that this committed the selection to Mr. Williams' discretion.

2d. The conclusion of law which the plaintiffs admit is, "that a court of equity will not interfere with a trustee in the exercise of a discretionary power save to see that a discretion is really exercised."

In the books the rule is stated more strongly, but when we take the two admissions, even as stated by the plaintiffs, it is difficult to see why they should be in a court of equity praying for a Master to select a site under the supervision of the court.

The will is the law of this estate. The intention of the testator is the pole star to guide the court in the construction and administration of the will. If Dr. Rush's estate is not to be treated as derelict, a waif to be grabbed by the first finder, if it is entitled to the protection of law, then the law must be applied according to the will, and that commits the selection of a site not to the discretion of this learned court, nor to any of its masters, but solely and exclusively to the discretion of Henry J. Williams.

So obvious is it that, upon the will and the law which belongs to the will, the plaintiffs have no case for a court of equity, they find themselves obliged to go outside and look up some exterior fact on which to build their exceedingly artificial edifice. They fancy they have found it in a circumstance which Mr. Williams has never attempted to conceal, but which, with indiscreet frankness, he has avowed and admitted again and again, verbally and in writing, to wit, that he purchased this lot for Dr. Rush before his death and by his express direction, and promised him eight days before his death that the Library building should be erected on this lot.

As this is the sole foundation of the plaintiffs' bill, I beg your Honor's attention to the following observations upon it.

1. It is an "exterior" fact. This is the very word one of the learned counsel applied to it in the argument at Nisi Prius. It does not arise out of the will, but it is brought in by parol evidence to defeat a main purpose of the will. No sane man will doubt that Dr. Rush intended

that Henry J. Williams should execute his will. And this intention dates from his death, for it was then the will took effect. But the testator knew perfectly what Mr. Williams had promised him. Still he altered not his will. Notwithstanding the promise, Dr. Rush's will was and is, that Henry J. Williams, with the pledge upon him, should be his executor. The plaintiffs seek to defeat this plain intention of the will by parol evidence of an irrelevant and "exterior" fact.

2. The promise was an imperfect obligation—a mere *nudum pactum*—and belongs to that class of consoling assurances which are so frequently given to dying persons by the friends who surround the death bed. Dying persons often exact promises as to where they shall be buried, what ceremonies shall attend the funeral, how the household shall be managed, and various other details, which, being found impracticable, are varied or neglected altogether. Courts of justice disregard such verbal promises, not from insensibility to what is due to the dead, but because they are not of a nature to control the due administration of the decedent's estate according to law. The promise complained of here is of the same quality. Had it conflicted with his duties and oath as executor, Mr. Williams tells you he would have renounced the trust; and nobody has any right to question his assertion, because he is admitted to be an honest man, and an omniscient eye alone is capable of reading his motives, thoughts, and intents better than himself. As there was nothing disabling in the nature of this promise, the uncontradicted proof is that in point of fact, it did not influence his discretion as executor.

3. But the complaint is, not that this unimportant promise was made—indeed Mr. Williams is commended for so comforting the dying man—but the plaintiffs complain that they were entitled to a sound and unbiased judgment in the selection of a site, and that the promise warped or had a manifest tendency to warp the defendant's discretion. On

pages 20 *et seq.* of the bill, this theory is set forth with abundant verbiage, but it is all founded upon a false assumption, *that they, the plaintiffs, were entitled to any higher or better discretion than such as Mr. Williams possessed.*

Whatever rights the plaintiffs originally had (I shall hereafter maintain that they have forfeited all they had), they held them under and according to the will. They were contingent legatees, and if they took any part of Dr. Rush's estate, they must take it in *formam doni;* they must take it at the hands of Mr. Williams, or in case of his disability, at the hands of Mr. Biddle or Mr. Craven. No other way had been provided for them—no otherwise were they legatees, or interested in the estate. The suggestion that Mr. Williams was not unbiased is a sheer impertinence. Biased or unbiased, free or trammelled, he was the appointed agent by which the plaintiffs were to get their legacy. It was as irrelevant to allege that his judgment was trammelled as it would have been to allege that his head was gray. Dr. Rush knew who he was, and what he was, and he selected him as his agent, his personal representative, to dispense his bounty, and if his ungrateful legatees don't like the hand that was chosen, let them refuse the gift and cease carping at the giver and his agent.

Both the master and the learned judge at Nisi Prius conceded to the plaintiffs more than they had a right to claim, as to the freedom of the will of Mr. Williams. The will of Dr. Rush speaks of a broad and thoughtful foresight in his executor, but it imposes no such rule as the plaintiffs claim. Not a word in this fundamental law gives the plaintiffs the right to a free, unbiased, unwarped judgment in the selection of site, but what it does give them is the discretion of Henry J. Williams. Their whole case, therefore, rests upon a gratuitous assumption, outside of the will and subversive of all its provisions.

And their analogies are no better. A man shall not be a judge or juror in his own case, because no law has said

he should be. But if I give a legacy by my will, where is the law that requires me to appoint a disinterested executor to pay it to the legatees? Frequently, very generally indeed, executors are interested parties, biased and warped by self-interest, but whoever before heard of a *legatee* objecting to his legacy on this ground? In this case it happens that the executor is free, untrammelled, and unwarped, which makes the complaint the more unreasonable, but if it were not as baseless as the fabric of a dream, if Mr. Williams were indeed subjugated by his promise to Dr. Rush, still in this case the law is that *he* shall execute the trusts of the will.

Equally inapplicable is the doctrine of the Duke of Portland's case. That was a case of settlement under peculiar circumstances, and the two attempts to execute the power were held void because the donee did not act upon his own discretion, but confessed himself a mere dummy. The Lord Chancellor said a valid appointment might have been made of the fund, but such as was made was held to be a fraud upon the power. What has the reasoning upon such a case to do with a will to be executed under the superintendence of our Orphans' Court, by an executor duly empowered to act, and actually proceeding as fast as he can to execute the will? I confess it is hard to trace an analogy that is so remote and attenuated.

These are the instances, set up by way of authority, to support the theory of the bill, and it is significant that they are so few and so inconclusive. Against them, such as thay are, I oppose the plain text of the will, and planting myself on that solid ground, I say that the discretion and judgment necessary to select a site for the library building must be exercised by Henry J. Williams or Alexander Biddle or Thomas Craven, or else Dr. Rush's will must be overthrown, and his heirs-at-law be admitted to the inheritance of his estate.

The 28th clause of the codicil of 16 May, 1866, and the 5th clause of the codicil of 18 April, 1867, contemplate the

possibility of Mr. Williams being unable to execute the will. These clauses were not indeed drawn with a view to what has happened, for no good angel who may have watched over Dr. Rush in his last hours could ever have anticipated such a case as this, but the will is to be construed by its four corners, and the intention of the testator is the rule for the court. So reading the will, can it be doubted that the testator intended to commit the selection of a site to one or the other of the above-named three men? He would be a bold man who would deny this.

But if such is the will, whence comes the power of a Master? Equity has jurisdiction of trusts, but only to execute them according to their institution. Courts of Chancery have no more power to repeal wills, or make wills for dead men, or substitute for their wills the fancies and conceits of lawyers, whom much learning has made mad, than Orphans' Courts have. Until it becomes unlawful for men to make wills, it will be unlawful for courts of justice to disregard and overthrow them. Dr. Rush did not appoint this court, nor any Master of this court, to execute his will. The prayer for a Master then is a gross aggression upon the will, which surely this court will be slow to tolerate.

And this brings me to an observation which failed to make any impression upon the Judge at Nisi Prius (doubtless through defectiveness of the statement), but which I venture to repeat—that this bill and its prayers are founded upon a denial of the *jus disponendi*, which I submit is the essential and main quality of property. The great motive for acquiring and guarding property is that we may dispose of it. Very little of it can we use—very little satisfies all our present wants, but the right to dispose of it when we are done with it is a most animating and invaluable right. It is at that right the plaintiffs strike. Their rights under the will were future and contingent—future because until the building was erected and tendered to them they were to have no voice in the matter, and contingent

because when the building should be tendered they might decline it, and then it was to become the Ridgway Library.

Now in such circumstances what haste was ever more indecent than the rush to Harrisburg to get from a pliant legislature the scandalous act of Assembly of 25th February, 1870? An act which virtually repeals Dr. Rush's will and authorizes such judicial changes of the plaintiffs' charter as may be necessary to "carry into effect the conditions and provisions of the said will and codicils *in accordance with the directions of this act.*"

Then came the resolution of 10 Dec. 1870, notifying Mr. Williams that the Company is now ready to undertake the performance of their duties as trustees of the Ridgway branch of the Library. "*Now ready*," before a spade is put into the ground—before the plan of building is drawn upon paper—they were now ready to undertake the performance of "*their duties.*" Pray, gentlemen, when, where, how had it become your duty to execute Dr. Rush's will? If this was not a piece of most ridiculous superserviceableness, it was worse, for it was a deliberate and malicious assault upon Dr. Rush's rights of property.

I pass by all the little acts of unkindness and petty annoyances to which these people subjected Mr. Williams, to say that this attempt to overthrow the will of their benefactor, culminating in this injunction suit, brings the plaintiffs within the spirit and purview of the 25th section of the 1st codicil. The words of that clause, "the said Library Company," originally intended for the plaintiffs, whom Dr. Rush trusted too confidingly, may be construed to mean the Ridgway Library, and then the plaintiffs have brought themselves, by their ill conduct, under the malediction of that clause. In other words, they have forfeited, by their persistent opposition to the will, all rights under it, and, happen what may, no part of Dr. Rush's estate ought, and I believe no part ever will go into their coffers.

GEORGE W. WOODWARD,
of Counsel for Appellant.

In the Supreme Court of Pennsylvania,

EASTERN DISTRICT.

LIBRARY COMPANY OF PHILADELPHIA

vs.

WILLIAMS.

BRIEF OF ARGUMENT FOR APPELLEES.

WM. HENRY RAWLE,
R. C. McMURTRIE,
WM. M. MEREDITH,
Of Counsel.

Allen, Lane & Scott's Printing House, 233 South Fifth St., Phila.

In the Supreme Court for the Eastern District of Pennsylvania.

IN EQUITY.

The Library Company of Philadelphia
vs.
Williams.

July Term, 1871.
No. 1.

BRIEF OF APPELLEES (COMPLAINANTS BELOW).

The case lies in a nutshell. An Examiner's report of 239 pages, a Master's report of 94 pages, an oral argument by six counsel for nearly four days, and a printed paper book of 69 pages, can all be reduced—as was done by the court below—to two simple questions,—one of law, the other of fact.

I. The question of law: May a trustee in whose discretion property is to be administered for the benefit of a third person, so bind that discretion in advance, that when the occasion arises for its exercise, it shall be taken to be non-existent?

II. The question of fact: Has the discretion given in this case been so bound?

I. The question of law.

Once admit the premise that a party interested in the exercise of a discretion by a trustee, has the right to demand that such exercise should be made from pure and not corrupt motives, and all the law of this case logically follows until it comes down to this—be the motive the worst or the best, still, after all, the discretion must be an existing one, unfettered and not bound.

1. Have the complainants an interest in the exercise of the defendant's discretion?

It is averred in the bill that this interest is "in the nature of property,* nor can it be denied. By the will, the library building, when completed, is to be conveyed to the complainants. Our interest, therefore, which is the right then to accept the building, includes the consequent right to ask that it be not placed in a locality which would absolutely prevent our accepting it at all. If a testator should give to an executor money wherewith to build a house for his daughter, could any one doubt that she had an *interest* in the locality of the house? If one were to give to an executor money wherewith to build the Land Office, could any one deny that the Commonwealth had such an *interest* in the locality as would give it a standing in court to prevent the building being put, from corrupt motives, in an improper place?

This is not upon the question of our *right to relief*—it is purely upon the question of our *interest*—our right to a standing in court. It is not even arguable,—and was, in the argument, conceded by the learned senior counsel for the defendant. In the language of the Master, (impliedly adopted by the court,) "The will, therefore, creates an interest in the plaintiffs which this court will protect, and the discretion allowed to the donee of the power is so inseparable from the duty to select and build, as to make the defendant, to all intents, subject, as to both, to the law applicable to trusts."†

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* Bill, page 20.

† Master's report, page 74.

2. How can such a discretion as this be exercised?
It must be either
(*a.*) By the testator, or
(*b.*) By the donee of the power.

(*a.*) By the testator.

Apart from nuncupative wills, the law knows but one way by which a testator can signify "the disposition of his property, to take effect after his death." By our law "Every will shall be in writing * * and shall be signed by the testator at the end thereof * * *otherwise such will shall be of no effect.*" And further, "No will in writing, concerning any real estate, shall be repealed, nor shall any devise or direction therein be altered, otherwise than by some other will or codicil in writing declaring the same, executed and proved in the same manner as is hereinbefore provided, or by burning, cancelling, &c."*

No one would be suffered to argue that where a testator's will gave his property to A., a verbal direction to his executor to give it to B. was of the slightest effect.

And hence, in the present case, no one would be suffered to argue that the testator could vary, by parol, the written will as to either of four things—

1. The *estate* devised,—for example, that the Library should only have one-half instead of all his estate.

2. The *purpose* for which it was devised,—for example, that it should be for some purpose "inconsistent with the legitimate purposes of a public library."†

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* Act of 8th April, 1833, Purdon, page 1016.

† Thus, after forbidding the formation of any museum, gallery, and the like, the testator said, "These are objects foreign to and inconsistent with the legitimate purposes of a public library, and it is only for the preservation, extension, and free and convenient use of such a library, without any ambitious or pretentious display, that it is desired to make provision." Master's report, page 17.

3. The persons *to whom* it was devised,—for example, that it should be the Mercantile Library instead of the Philadelphia Library.

4. The mode *in which* it was devised,—for example, that the building should or should not be fire-proof, that it should or should not be in a particular locality,* or that the executor should or should not have a discretion to choose the locality.†

As to all of these, of course no parol proof could be admitted without overturning what have become general principles of jurisprudence.‡

Perhaps the strongest instance of the enforcement of the Statute of Wills was the late case in this court of Alter's Appeal, in which a husband and wife made mutual wills, each giving to the other all his and her estate. The evidence was conclusive of the fact that, by mistake, *each signed the other's will*, and yet the wife, who died first, was held to have died intestate, her will not having been "signed by her," and even an act of the Legislature, passed for the purpose, was held insufficient to help the case.

And the most perfect illustration of the *effect* of the statute occurred in the memorable cause before Lord Brougham. The draft will, which had been approved, showed that a line had been omitted in engrossing the will that was signed. Counsel denied the right of the Chancellor even to *look at the draft*, to ascertain whether there had been a mistake. He, arbitrarily, did look at it, and was satisfied there had been a mere mistake by a clerk; but he admitted he could not correct it without repealing the statute which prohibits *proof of the will* of a testator, except by a writing signed at the end.

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* "In trust, to select and purchase a lot of ground, not less than one hundred and fifty feet square, situate between Fourth and Fifteenth and Spruce and Race streets, in the city of Philadelphia."—*Testator's Will.*

† "I authorize and allow my executor, under a broad and thoughtful foresight, to increase the size of the lot, and select any situation he may deem most expedient, without regard to any provision of my will or codicils."

‡ And even in this particular case, if such variations had been *in writing*, it would, under the statute of 1855, have been of no effect because made within thirty days of the testator's death. See act of 26th April, 1855, Purdon, 146.

(*b.*) By the donee of the power or discretion. Of course, the distinction is obvious between a mere power, and a power in the nature of a trust. As to the former, it is well settled that equity will not compel its execution, and equally well settled that it will aid its defective execution; but as to powers in the nature of trusts it is different, it being considered that "a person who creates a trust, means it shall be executed at all events,"* and it is, of course, solely of powers in the nature of trusts that we are now speaking.

No one doubts the general doctrine that a court will not control the discretion of a trustee; but it is equally true that "the donee of a power is not the absolute owner of the property which is subject to the power."† Thus it is familiar that

1. A court will *compel the exercise* of a discretion.

As to this, Lord Eldon's language may suffice:—

"The principle of all these cases is that if the power is a power which it is *the duty* of the party to execute, made his duty by the requisition of the will, put upon him as such by the testator, who has given him an interest extensive enough to enable him to discharge it, he is a trustee for the exercise of the power, and, not having *a discretion* whether he will exercise it or not, the court adopts the principle as to trusts, and will not permit his negligence, accident or other circumstances to disappoint the interests of those for whose benefit he is called upon to execute it." ‡

In the present case, if the defendant should say "My discretion is that the library company are better off where they now are, and I will choose no lot," would it be seriously argued that this court could not compel the exercise of his discretion, and if he would not choose himself, would choose for him?

In Erisman *vs.* Directors of the Poor, 11 Wright, 509, where an estate was given to a trustee to apply the income in the pur-

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* Per Lord Wilmot, in Attorney General *vs.* Downing, Wilmot's R., 23; Perry on Trusts, § 248.

† Per Lord Justice Turner, in Topham *vs.* Duke of Portland, 1 De Gex, Jones & Smith, 568.

‡ Brown *vs.* Higgs, 8 Vesey, 574, quoted by the Master, pages 73–4.

chase of the necessaries of life for the support of a woman, and also the principal, "if urgent necessity should require;" the woman was in indigent circumstances, became insane, and was committed to the State hospital, and the trustees having refused to apply the funds to her support, this court said:—

"The first object of the testatrix's bounty was this unfortunate woman, and the will must be so interpreted. Had she remained of sound mind, and a case of urgent necessity arisen to which the interest of the bequest would have been inadequate, no one can doubt but that her interest in it would have been such as to entitle her to call on the trustee for the application of a portion or the whole of the legacy, as the case may require. * * * *The objection that this dispenses with the discretion of the trustee has no merit.* This discretion is but a legal one, and whenever the law determines that a proper case has arisen in which the trustee's discretion should have been exercised in a particular way, he will be constrained to act in accordance therewith."

2. A court will prevent an *improper* exercise of a discretion.

In McFarland's Appeal, 1 Wright, 205, the court, speaking of a discretionary power of sale, said, "If it had been a matter of discretion, still an unreasonable exercise of it could be corrected by the supervision of the court."

So in Pulfress *vs.* African Church, 12 Wright, 210, already cited by appellants, Strong, J., said, "If it were manifest that their honest discretion is not exercised, it might become the duty of the court to interfere."

The subject is too trite to be followed further. The text books are full of it, and perhaps the best illustration will be found in a class of cases not very usual here, viz., where the consent of a trustee is necessary to a marriage; and when the trustee either declines to exercise any discretion at all, or refuses his assent from motives of personal pique or resentment, the court exercises its supervision according to the course and practice of chancery, by a reference to a master, to inquire and report whether the marriage be a proper one.*

* In Hill on Trustees, * 494 to 502, most of the cases on the subject of controlling the improper exercise of a power are collected.

3. So, too, a court will interfere where a trustee has *bound* his discretion, and this, without regard to the motive and intention which induced the result. It is sufficient for the court that the exercise be not with the eye single to the benefit of the appointee.

Now, the donee of a discretion may bind it in one of there ways:—

1. By corrupt motives.

2. By motives personal to himself.

3. By the highest and best motives.

And the law knows no difference as to the result,—all are equally, in technical language, "a fraud upon the power."*

The books contain cases as to each of these classes:—

1. By corrupt motives.

The jurisdiction of equity as to such a case was exercised more than a century ago. The Lord Sandwich whose case was referred to by Lord Eldon and Sir E. Sugden, (for the case seems to be unreported,) was no doubt the celebrated Lord Sandwich (the fourth Earl) of whom others than Walpole have told

* The familiar leading case as to "fraud upon a power" is Aleyn *vs.* Belchier, 1 Leading Cases in Equity, *304, decided by Lord Worthington (then Lord Keeper Henley) in 1758, and it is said by the editor to have been "decided upon the well-established principle that a person having a power *must execute it* bona fide *for the end designed*, otherwise the appointment, although unimpeachable in law, will be held corrupt and void in equity." In the notes to this case many of the authorities are collected. Whatever may have been the indisposition of American courts to follow the doctrine up to that of illusory appointments, (now abolished by statute,) the principle on which it is based was never doubted in this country. In 1824 Chancellor Desaussure said, "This construction is according to a rule in equity which has long prevailed, and is of considerable extent and application. It is that where the power of electing is given to a trustee, as to the rights of a third person, the trustee is bound to exercise that power most beneficially for the *cestui que use*." Haynesworth *vs.* Cox, Harper's Eq. R., (L. Cases,) 119.

such disreputable stories.* In McQueen *vs.* Farquhar, 11 Vesey, 480, Lord Eldon referred to the case, and Sir E. Sugden, then Chancellor of Ireland, thus spoke of it:—

"But even if such an abuse should be attempted, a court of equity is not powerless to guard against it. Lord Sandwich's case decided this. There, a father who had a power of appointment among his children, supposing that one of them was in a consumption, executed his power in favor of that child, and the court declared the appointment to be void, being of the opinion that the object of the appointor when he made the appointment was that he might himself have the chance of getting the share as administrator of his child." Keily *vs.* Keily, 4 Drury & Warren, 55.

Lady Wellesley *vs.* The Earl of Mornington, 2 Kay & Johnson, 143, was almost identical with Lord Sandwich's case.

On the Earl of Mornington's marriage, in 1812, estates were settled to the husband and wife for life, with a power reserved to him to appoint £40,000 among the children of the marriage. In 1850, the Earl appointed the greater part of this sum (which, it will be remembered, had been his own money) to his son James, who soon after died. The bill was filed by one of the other children to set aside this appointment, on the ground that it was well known to the Earl that James' life was despaired of; that the appointment was made by him for his own benefit and advantage, being the next of kin of his son, and without regard to the interests of his other children. The Earl, in his answer, swore distinctly that his only motive in making the appointment was, that having reason to fear that James might continue in an infirm state of body and mind, he was anxious to make such a provision as should enable him to live in comfort, and that he exercised a discretion which he was entitled to exercise under the settlement. And in a subsequent affidavit he swore that before the appointment he had been informed that James had, some time before, executed a will bequeathing all his estate to "a lady

* Lord Sandwich married in 1740 and died in 1792, so that the decision was probably made at least a hundred years ago. One of his mistresses married Dr. Dodd, and another was shot in a hackney-coach.

with whom he was then living." The evidence showed that James was in "a deplorable state of health," a dissolute man, with mind and body broken down by intemperance, and a hopeless lunatic, and that the Earl had this from James' own physician. He, moreover, owed £3000.

The whole of the opinion of the court, (Sir W. Page Wood, afterwards Lord Hatherley,) setting aside the appointment as "a fraud upon the power," deserves attention. Without hearing the complainants' counsel in reply, the decision was given, and was

"rested on the ground of fraud on the part of the parent; I mean not simply upon the ground of the appointments not being for the child's benefit, but upon the broad ground that the parent executed these appointments, not with any intention of benefiting the object of the power, but to secure to himself the benefit that might result from the appointments so executed. * * I quite concede that deeds are not to be set aside for fraud on vague suspicion, and the case I have been referred to* was that and nothing more. A trustee had said, 'I suspect some arrangement has been come to between this lady and her daughter, and I will not hand over the fund.' The answer of the Vice Chancellor was, 'let the parties who question the appointment come forward and question it. I shall not, on this vague surmise, allow the trustee to withhold a fund which has thus been appointed, merely because he says he entertains vague suspicions. Let the parties who are interested in the discussion come forward?' That is what the parties who are interested in the discussion are doing here. They are coming forward to dispute it, and the dispute is distinctly put on this ground. 'You have made this appointment of £27,000, without any intention whatever of benefiting your son. You have made it for the sole purpose of obtaining a benefit to yourself.' The case must rest on ground as high as that, and I put it as high as that. I ask, can anybody, if this case were before a jury, suppose that the defense which is made would be a satisfactory answer with reference to an appointment to a person in this imbecile condition? A lunatic who was in a weak and infirm state of health brought on by excesses. The father had been informed throughout, that the weakness and infirmity of his son's health was so occasioned, and having made due inquiries at two previous periods as to the state of his health,

* Campbell *vs.* Horne, 1 Young & Collyer's Chan. R., 664.

he makes no inquiry at the time when he is about to execute these deeds. Can I believe, or can anybody believe, that this was done for the purpose of paying the supposed amount of debts, three or four thousand pounds, when one finds an appointment made of £27,000, and when one observes (which is of considerable importance) the course that was taken after the appointment was so made? * * Lord Mornington suggests that it was impossible he could have a notion that he was to be the party to benefit by these instruments, because he had heard, and he believed, that his son had previous to his lunacy made a will, by which he had given the whole of his property to a person with whom he had lived. I confess that it is one of the most extraordinary statements in this case, that Lord Mornington, believing his son's debts to be only £3000, did, to the detriment of his daughter Lady Victoria, appoint to him in this state, £27,000, in the belief that the surplus would go to a woman with whom his son had been living. Anything more monstrous and more incredible was never stated in a court of justice, * * but it proves to what statements a person is driven who makes a statement of this sort in order to justify the act which he has committed. * * Holding, therefore, as I do, that the appointment has been made by Lord Mornington, not for the benefit of his son, but for his own benefit, it seems to me consistent with the whole class of authorities, and to follow the principle of the class of authorities in which the object of the power was capable of entering into a bargain with the father, which this unfortunate gentlemen was not, to hold that this is a fraud upon the power; that it is an exercise of the power by which the father endeavored to obtain a benefit for himself, which, of course, the court will not allow him to retain, and the consequence is, that the deeds must be set aside, and Lord Mornington must pay the costs of this suit."

Less strong as to motive, and therefore more strongly in our favor as to the doctrine, is the case of Marsden's Trusts, 4 Drewry, 594, decided by Vice-Chancellor Kindersley in 1859. On the marriage of Mr. and Mrs. Martin, their marriage settlement gave her a power of appointment of certain stocks among the children. Some years after, Mrs. Martin, wishing to make a better provision for her husband, proposed to appoint the whole property to one daughter upon condition that, at her majority, she should give her father one-half absolutely, and a life interest in the other

half. Being advised that this could not legally be done, she appointed absolutely to the daughter.

"It appeared," says the report of the case, "that the intention of Mr. and Mrs. Martin was, that Mr. Martin should, after the death of Mrs. Martin, inform the daughter of the object to effect which the appointment had been exercised in her favor, leaving it in the discretion of the daughter to carry out her mother's intentions. It was admitted that Isabel Charlotte Martin was entirely ignorant of the execution of the appointment in her favor till after the death of Mrs. Martin."

On the daughter attaining majority, she applied to the trustees under the settlement for the stock, but the other children raising a question as to the validity of the appointment, the trustees paid the fund into court, and she petitioned for leave to take it out.

It was thus urged on her behalf:—

"Mrs. Martin had a discretion given her by the power to exercise it in favor of any of the children to the exclusion of the others, and she has accordingly appointed in favor of the eldest daughter. There has been no bargain between the appointor and the appointee, for it is admitted that the daughter did not even know of the appointment in her favor till after the death of her mother; and whatever may have been the intention of Mrs. Martin in making the appointment, the daughter is not even morally bound to carry out such intention, neither is the appointment in her favor vitiated thereby. No fraudulent intention on the part of the appointor in exercising her power has been proved, and the court will not interfere with the exercise of the discretion given to the donee of the power, unless such a fraudulent intention has been actually proved. No presumption, however strong, is sufficient."

The Vice Chancellor said,—

"The question raised by the petition is, whether a certain execution of a power of appointment is to be considered as valid, or whether it is void as being a fraud on the power. The petitioner is the person in whose favor the power has been exercised, and she insists that the appointment is valid, and under the circumstances not a fraud on the power. [The Vice Chancellor then stated the facts of the case.] On the

face of the instrument, the power appears to have been well exercised, and the question is, whether under the circumstances it is in effect a fraud on the power. The power in question is only one form of a discretionary trust to be exercised for the benefit of certain objects, or some of them. The objects of the power are the children of the marriage; and the purpose of the settlement was to make a provision for their benefit, but at the same time to reserve to the mother such a power as would keep the children under control, and to enable her to distribute the property among them in such manner as in her opinion their respective wants and interests, and the exigencies of the case, might require. The same general principles which are applicable to discretionary trusts in general, are applicable to this particular species of discretionary trust. Unless it can be shown that the trustee having the discretion exercises the trust corruptly or improperly, or in a manner which is for the purpose, not of carrying into effect the trust, but defeating the purpose of the trust, the court will not control or interfere with the exercise of the discretion. There may be a suspicion that the trust has been exercised in a particular manner and from a certain motive, which, if it could be proved, would be held not to be a proper motive; but if it be mere suspicion—though suspicion is ground for jealous investigation, if it be mere suspicion—and matter amounting to a judicial inference or conviction from the facts, the court will not act upon it. But if, on the other hand, it can be proved to the satisfaction of the judicial mind that the power has been exercised corruptly or for a purpose which defeats instead of carrying into effect the purposes of the trust, then the court will not permit the exercise of such a power to prevail. * * * Now it appears to me, that looking at the authorities, and in the view I have taken of the evidence, the case comes within that class of cases in which this court says there has been a fraud upon the power, inasmuch as it has been exercised in such a way as to defeat the purpose for which it was given."

"In some of the cases which have been cited, there has been a direct bargain between the donee of the power and the person in whose favor it is exercised, under which the donee of the power was himself to derive a benefit; and certainly there has been nothing of that kind in this case. In my opinion, however, it is not necessary that the appointee should be privy to the transaction, because the design to defeat the purpose for which the power was created will stand just the same whether the appointee was aware of it or not; and the case of Wellesley *vs.*

Mornington shows that it is not necessary, in order to bring the case within the scope of the jurisdiction on which this court acts, that the appointee should be aware of the intentions of the appointment or of its being actually made.

"Neither is it necessary that the object should be the personal benefit of the donee of the power. If the design of the donee in exercising the power is to confer a benefit, not upon himself actually, but upon some other person not being an object of the power, that motive just as much interferes with and defeats the purpose for which the trust was created as if it had been for the actual benefit of the donee himself. I must hold that this exercise of the power is void, as being what is technically called a fraud on the power; and I cannot grant the prayer of this petition, which must be dismissed with costs."

These cases have been selected as most strikingly illustrative of the doctrine. There are many others:

In Daubeny *vs.* Cockburn, 1 Merivale, 626, decided by Sir William Grant in 1816, it was held that an appointment to one child exclusively, upon a secret understanding that that child should re-assign a part of the fund to a stranger, was a fraud upon the power, and void not only to the extent of the sum appointed, but *in toto*.

So in Jackson *vs.* Jackson, Drury, (Irish Ch.,) 91—decided by Sir E. Sugden, then Chancellor of Ireland, in 1843—a father, the donee of a power of appointment, appointed to one child under an arrangement by which he was to receive part of the fund, and it was unhesitatingly set aside.

"To render such an appointment fraudulent, it is not necessary that it should be wholly for the benefit of the father, it is enough that it is partially so; and if it be either wholly or partially in the father's favor, if any benefit be derived to the father himself through the instrumentality of that power of appointment, this court holds that though in legal form it is exercised in favor of the son, it is a fraudulent and void disposition."

And in Arnold *vs.* Hardwicke, 7 Simons, 343, it was held that where the donee of a power appointed the fund to one of the objects, with the understanding that the latter was to lend the fund to the former *on good security*, the appointment was bad.

These cases illustrate the doctrine of "fraud upon a power" where the motive is a corrupt, *i. e.*, a pecuniary one.

2. Where the motive, though not pecuniarily corrupt, is one personal to the donee of the power.

Dummer *vs.* The Corporation of Chippenham, 14 Vesey, 245, decided by Lord Eldon in 1807, is the leading case as to this.

The corporation was seized of an estate for the support of a free school for the education of twelve poor boys, and the appointment of the schoolmaster was in the bailiff and a majority of the trustees, and the plaintiff had for years been appointed to, and held that office. The defendants turned him out, on the alleged ground of bodily disease, but really, as charged in the bill, "actuated by resentment and party spirit" because he had voted for a member of parliament against their wishes. The bill prayed for a discovery in the usual form, and an injunction, and to this the defendants demurred. The Chancellor, in his first judgment delivered after the argument, said:—

"If these persons, trustees of a school for charitable purposes, were acting as individuals, the court would have no difficulty in dealing with them, and there is no doubt the court will compel a corporation, who are trustees, to act as they ought. The principle upon which this case is argued, goes to this length, that if it could be made out by discovery from each of these persons, supposing no combination in the answer, that they turned out this schoolmaster not upon any well-founded opinion, but influenced by a corrupt motive, that discovery should be shut out."

And the next day, in a more elaborate judgment, he overruled the demurrer.

The remarkable thing in this case is that the Chancellor so took for granted the result that would follow, in case the answer should admit the facts charged in the bill, that he did not even discuss the question.

"The question upon this case is, whether this court can entertain a bill against these individuals, as parties to obtain a discovery whether though their means, so manifested, there was

such an abuse of the discretion vested in the corporation, as trustees, as this court will reform."

Implying, of course, that if such an abuse *were* made out, the court *would* interfere.

Nearly half a century later, the law was equally so taken for granted in the case of Beloved Wilkes' Charity, 3 McNaughten & Gordon, 440,* which is cited at such length by the Master† that the briefest reference to it will suffice here. The ministers of certain parishes had a right to apply certain funds to educate a boy for the ministry. They rejected a boy named Gale and appointed another, and Gale's father filed a bill to set aside their appointment, on the ground that the motive was the belief of the ministers "that the sons of farmers and agriculturalists were not desirable persons to be educated for the ministry of a church." The only difficulty in the case was as to the proof, for the law was taken for granted on both sides. The appointment was set aside by Vice-Chancellor Cranworth, but this was reversed on appeal, on the ground that there was *no evidence* of any other than a *bona fide* exercise of the discretion. "It is evident, from the judgment of the Chancellor," says the Master, "that if it had been shown that the trustees had laid down a rule that the sons of farmers were not persons in a situation of life fit to be the objects of the charity, he would have sustained the order notwithstanding the plenary discretion given in the will."‡

3. Where the motive is one of the highest and best imaginable.

Thus, in the Duke of Portland's case, the motive was filial obedience. The whole case turned upon the fact that the Duke hated his daughter's attachment to Col. Topham—that this was, of course, known in the family (as it could not help being known)—

* The case is much more fully reported in 7 English Law & Eq. Rep., 85.
† Master's Report, page 77.
‡ *Id.*, page 79.

that not satisfied with her promise not to marry while he lived, he, in order to prevent the marriage after his death, contrived the deed of trust—and when, after his death, she did marry, his son made the appointment just as his father intended that he should make it in that event. And in this case, as well as in the other cases cited, there was no difficulty as to the law—it was taken for granted.* The only trouble was as to the facts, because in every case, except the present one, where human motive is the unknown quantity, and the thing after which a court is groping, it is difficult to discover what particular springs of action have produced the result. Our learned opponents, in their statement of this case, have said, "Nothing appears to have been said by the late Duke, before the creation of the power, as to the manner of its exercise," from which they would seem to have us infer that the deed of trust was a harmless creation of his own for no ulterior object, and that his children were equally simple-minded. Why, the only point on which the whole case hinged was the hatred of the Duke to the match, and the descent of his hatred upon his son and other daughter, filially adopted and made their own hatred. Of course, the family dissension must have been something terrible. Lady Mary, who, the Peerage tells us, was born in 1809, became engaged to Col. Topham in 1843, and for eleven years after, her filial obedience mastered her love. But her father died in 1854, and instantly she married, and, as instantly, her brother fired the piece which his father had loaded in 1848.†

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* The case was argued by the very ablest men at the bar, among others, the present Chancellor (then Sir Roundell Palmer), Lord (then Sir Hugh) Cairns, Mr. Rolt, Q. C., Mr. F. Philipse Morris, Mr. Giffard, and Sir Selwyn-Ibbotson (then Mr. Selwyn).

† The mild way in which our opponents have tried to state this cause makes the reasoning of all the judges who decided it almost idiotic. Thus we are told:

"The old Duke of Portland conveyed certain property by deed of trust to his son, the present duke, and authorized him to appoint it between two of his daughters, Harriet and Mary, or to appoint it to one in exclusion of the other, and subject to such restrictions as the donee of the power might think fit. Before this, *it had come to the knowledge* of the duke that his youngest daughter (Lady Mary) had entertained proposals of marriage from Col. Topham. He did not think fit to approve of the match, and strongly expressed his opinion, threatening that he would, so far as he had the power, leave away everything from her. She promised not to marry in his lifetime. Nothing appears to have been said by the late duke,

It is idle to suppose that, during those eleven years, the well-known obstinate Bentinck blood was not strongly stirred. No case was ever more fully reported as to the facts, and no one concerned in the cause ever dreamed of denying that the Duke's hatred of the marriage was as strong as was the obedience of his children. The struggle in the case was to discover the spring of action—the motive which induced the appointment away from Lady Mary. For the new Duke said, "I made the appointment of my free will and accord; I have sworn it, and who shall gainsay it?" The Topham's said, "No! it was made under the pressure of filial obedience." Now, in the case where Lord Mornington swore that he made the appointment out of tender regard for his son's comfort, the Chancellor said, "I don't believe you." In the Portland case, one of the judges politely said the same thing of the Duke:—

"It has been pressed upon us, that, secondly, I must discredit the statements made by the Duke's answer and affidavit. As to this, I hold that every man must be presumed to intend and mean that which is the natural and necessary effect of his acts."

But others of the judges went further, and said that they "gave absolute credence to all that the Duke and Lady Harriet swore to;" in other words, they said, "You may *think* that you are under no pressure, and you may swear to it; but you deceive yourselves." Just as in the present case, no one doubts that the defendant, from the bottom of his heart, verily believes that his discretion is as unbound as if the testator had never mentioned Broad and

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before the creation of the power, as to the manner of its exercise. No previous promise was given."

The case came up five times,—three times under the first appointment, and twice under the second,—and is reported as follows:—

Under the first appointment—

Topham *vs.* Portland, 31 Beavan, 525, Roll's Court, Sir J. Romilly, M. R.;

Same *vs.* Same, De Gex, Jones & Smith, 517, L. J. Knight Bruce;

Portland *vs.* Topham, 11 House of Lords, 32, Lords Westbury, Cranworth, St. Leonards, and Chelmsford.

Under the second appointment—

Topham *vs.* Portland, 5 Law Rep., Chanc. App., 49, note, V. C. James;

Same *vs.* Same, on appeal, Lord Hatherley and L. J. Giffard.

Christian streets; but while in the same breath he tells us that his conscience will not allow him to "violate a pledge given under circumstances which render it as sacred as an oath," human intellect is inadequate to grapple with this inconsistency.

"Therein and thereby," said the Court below, "he *proves* the indelible stamp made upon his mind. Conscience, resting under an obligation strong as an oath, bound him to the observance of his promise. With that deep sense of moral obligation resting upon his conscience, he assumed the duties of the trust."

If the Duke of Portland had ever said, or had written it down, that he had promised his father to appoint the property away from Lady Mary if she married Col. Topham, and that he regarded that promise as binding on his conscience as an oath, his counsel would not have been even listened to. Once given the facts, and the law followed as of course.

"We have held all these appointments to be void," said the Court, "as being a fraud upon the power under which they were made—fraudulent in the eye of this court, without reference to the question whether they were morally so or not."

In the House of Lords, after Sir Hugh Cairns' argument had been shattered by the questions put to him, and the court had declined to hear an argument for Lady Mary's counsel, these sentences were the opening of the judgment pronounced by one more familiar to us by the name of Sugden than by that of Lord St. Leonards:—

"My Lords, the rules on this subject are so well settled that it is quite unnecessary to go through any authorities on the subject. A party having a power like this, must fairly and honestly execute it without having any ulterior object to be accomplished. He cannot carry into execution any indirect object, or acquire any benefit for himself, directly or indirectly. It may be subject to limitations and directions, but it must be a pure, straightforward, honest dedication of the property, as property, to the person to whom he affects or attempts to give it in that character."

And when the second appointment was also set aside as being made "from the old understanding—from the old purpose—from

the old influence," Lord Justice Giffard thus closed his judgment:—

"I have only to add that if the object of the appointment in this case had been simply the benefit of the Duke of Portland himself, I am persuaded he would never have come into court. The real object, though morally speaking, far different, must, legally speaking, be considered on precisely the same principle as though he sought a benefit for himself; for the object is to bring about a state of things not warranted by the power. It may be that, on consideration, the Duke of Portland will concur in the opinion that the matter may from henceforth be well left at rest."

It is not worth while to analyze our opponents' attempted distinction between this case and the present one. The case speaks for itself.*

But if it should be argued that while a contract with a stranger for a reward, or even the laudable desire to benefit a friend may be "a fraud upon the power," yet, inasmuch as the obligation in this case was imposed by *the testator himself*, the result will be different, the answer is obvious; it all comes back to the same thing; the testator's disposition of his property, including any variations of disposition, must be made in the only way known to the law, namely, by writing it in the will. Else, of course, it is an evasion of the Statute of Wills.

And this is the answer of a lawyer to that argument so attractive to the layman and to the feminine mind, "Why, you seek to prevent the executor from doing the very thing which the testator had set his heart upon." So long as there have been Statutes of Wills, so long have courts refused to allow them to be varied by parol—for where could courts stop? It has been since the decision in this case that one of the counsel heard a daughter,

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* And even *at law*, nothing is better settled than that a colorable exercise of a discretion, or a pretended exercise, is no exercise at all, and mandamus will lie; Regina *vs.* Mayor of York, 1 Ellis & Black., (Q. B.,) 594, and, even a refusal to act under a mistaken notion of a rule of law is no exercise; Moffat *vs.* Dickson 13 Com. Bench, 543.

to whom her father had, to her surprise, not left her a certain house, indignantly ask, "What are a few words written in a will, compared to the conversations of a lifetime?"

II. The question of fact. Has the discretion in this case been bound?

The court below spoke of the "uncontradicted evidence," and indeed, the case might almost have been argued upon bill and answer. The testimony taken before the Examiner was only done out of abundant caution to exclude possible conclusions arising out of the answer.

The defendant made a promise to the testator to build the library on a particular site "and nowhere else;" and he has told us, in his letter, in his answer, and in his evidence, that he regards this promise "as sacred as an oath." Now, there are men to whom integrity is an instinct, and moral sense, spontaneous. And for this very reason, as was conclusively put by the Court below, "the greater the integrity, the higher the moral sense, the stronger would be the obligation upon the conscience."

To a coarse mind, the pressure on the discretion from having received a certain sum of money for choosing one site, would be effaced by the greater pressure from subsequently receiving a larger sum for choosing another; but, to a man of instinctive integrity, the slightest pledge of faith is ineffaceable, and from thenceforth there is "no variableness, neither shadow of turning." And the very fact that the defendant tells us, "I believe that I am just as able to determine whether the site at Broad and Christian streets is proper and beneficial, as if I had made no promise at all,"* is, to a human mind, the most overwhelming and conclusive proof that his discretion is absolutely gone.

"Certain facts," said the Court below, "which the wisdom of ages has recognized as influencing the judgment of mankind generally, create a conclusion of law that they will influence the judgment of each individual. Apply the law and reason to this case, testing the uncontradicted evidence by all those principles

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* Defendant's answer, page 28.

which I have ever been taught to believe influence the human mind and control the actions of men, it does establish such a state of facts as would naturally and reasonably restrain and trammel the free judgment of the donee of a power."

There are cases in which the law raises a presumption, against which it will listen to nothing. A juror who has received money for his vote cannot, by taking it out of his pocket, purge himself of his taint and restore his unbiased judgment. On this side of the Atlantic, one who has been counsel in a case cannot, after any lapse of time, sit in it as a judge. Nor can a judge at any time sit in a cause in which he may have, even indirectly, the slightest pecuniary interest. There are no decisions to this effect. We would search for them in vain. It is but the effort of human wisdom to guard against human frailties in those things as to which "we have no power of ourselves to help ourselves." As was said by the Court below:—

"A judge or juror is forbidden to sit in a case wherein a party litigant is closely related to him by blood or marriage. He will not be permitted to purge himself of his disqualification by announcing that he can and will act wholly uninfluenced by such relationship."

III. There remains but to notice the objection to the relief prayed, and to the decree.

We are entitled, under a will, to have money spent for our benefit. Circumstances have deprived us of part of the testator's machinery, namely, the exercise of a certain person's discretion. Of course, this does not deprive us of the bounty of the testator, and as machinery is wanted to direct its current, this court, upon the most trite and familiar principles of equitable jurisprudence, supplies other machinery in place of that which has been lost. We would be ashamed to cite authority for this. If any were needed beyond those cited by the Master on page 83, it may be suggested that this court is now, through its Master, in the case of Marvin *vs.* Drexel, carrying out a large real estate speculation on Broad street, some few squares below Christian street.

Then, too, the defendant complains that a Master, the choice of the Court, is not the choice of the testator. But no more is a Court the chosen interpreter of a testator's intention, and a Master is but the Court, acting necessarily, to some extent, by delegation. If analogy were wanted, we might again refer to the class of cases as to a trustee's consent to a marriage. When there exists "a fraud upon the power" to consent, the Court itself inquires, through its Master, whether the marriage be a proper one, and thus women are not left to starve for matrimony.

Further, the defendant complains that he still possesses the right to say how much shall be expended in building. But the question of site and expenditure are inseparable. Given the wealth of the Indies, and the question of expenditure—so much for site, and so much for the building—is insignificant. But if there be but a limited sum, large or small, the questions cannot be severed. At any rate, this court will seek for the best lights it can find, in order to carry out the testator's intention, as contained in his written will. *Non constat* that, after all, Broad and Christian streets may not be the best place. The case is the same as if the executor had died the day after the testator, and this Court will not suffer the latter's noble charity to fail by reason of an accident.

And, finally, the defendant complains that although Broad and Christian streets may be excluded from his choice, he may still be permitted to choose elsewhere. What then becomes of his promise that he will build there "and nowhere else"? It is this promise which has been "a fraud upon the power," and although he may absolve himself, a court of equity cannot absolve him.

WM. HENRY RAWLE,
R. C. McMURTRIE,
WM. H. MEREDITH,
Of Counsel for Appellees.

Supreme Court of Pennsylv'a.

PHILADELPHIA LIBRARY COMPANY v. HENRY J. WILLIAMS.

1. The taking by a court from the hands of a testamentary trustee, the execution of a power submitted to his sole discretion, would violate the right of private property and the spirit and purpose of the bill of rights, and could not be justified except upon the clearest evidence of his fraud or incapacity.

2. To hold that by reason of his promise to the testator, the mind of a trustee of admitted integrity, was under a constraint of which he was unconscious, and which made him incapable of exercising his judgment, notwithstanding he swears that he did act upon his own judgment, and because it accorded with his promise, would be to deny the power of self-knowledge and the capability of self-examination, upon which rests the doctrine of man's accountability for his thoughts and purposes.

3. Though a verbal direction of a testator in conflict with a power contained in his will, cannot alter the written terms of the power, yet a court of equity may compel a trustee to comply with a promise to follow a verbal direction and act of the testator, in the line of the power.

4. A chancellor will so control a trustee that he shall not disappoint the true intent and purpose of the donor, as gathered from the instrument containing the power; and an innocent motive will not save the exercise of the power if it violate the true purpose of the trust: broader than this there can be no conception of chancery power in Pennsylvania.

5. By the terms of a will, a trustee was to act under a broad and thoughtful foresight in the selec ion of a lot whereon to erect a building for a public library. The testator prior to his death, engaged the trustee upon his solemn promise to select a certain lot. The trustee, a man of admitted integrity, did select that lot. Upon a bill in equity filed against him, he both in his answer and whilst under examination, declared that he selected the lot because he thought it the best for the purpose that could be obtained, and assigned good reasons therefor. *Held*, that he had properly exercised the power.

Certificate from Nisi Prius.

Opinion by AGNEW, J. Delivered May 19th, 1873.

This is not an ordinary proceeding. It is an endeavor to set aside a man's solemn act, done in the exercise of his right of property, in his life-time, when he had absolute power over his own estate. It is an effort also to declare his friend, the chosen agent to execute his purpose, invested with absolute discretion to this end, disqualified to perform his will, because at his earnest request this friend has adopted and followed the testator's act. As a consequence, the bill seeks, on the ground of entire disqualification, to take the actual execution of the will into the hands of the court, and to declare how much of the *corpus* of the estate shall be used for that purpose. As a further consequence, the will must be executed by a stranger—a master acting under decrees procured from time to time by plaintiffs; for, by the total disqualification of the executor, the testator is no longer represented. This is the frame and purpose of this bill. Such a proceeding violates the right of private property and the spirit and purpose of the bill of rights, and cannot be justified except upon the clearest evidence of the incapacity of the executor, or that he is acting in fraud of his powers.

The case, briefly stated, is this: Dr. Jas. Rush, a gentleman of education and fortune, though somewhat peculiar, conceived the thought of founding a noble charity, at once a public benefit to his native city, Philadelphia, and a monument to those from whom he derived his wealth. He pondered on the subject and then made his will. At first he restricted the site of the building to certain central limits; but the rapid progress of the city during the eventful period of 1860 to 1867, altered his views of location. Fearful, if his charities were placed near the centre of the city, where property was rising rapidly, that the building might be swept away by the tide of speculation, he made a codicil, revoked the restriction, and enabled his executor to go beyond the limits stated in his will. Still reflecting upon his scheme for about two years more, and anxious to locate his charity to suit his own thoughts, he had careful examinations made by his friend and executor, and finding no other site suitable, either from

price or size, he finally chose a spacious square on the great central avenue of the city, a few squares south of the original limit, and bought it at a cost of $130,000, or about one eighth of his entire estate. Upon this ground he directed his executor to build, and, to secure his co-operation, obtained his promise to do so. This promise was given, the executor swears most positively, not only out of regard to the testator's wishes, but because the lot and site were approved by his own judgment, founded on a previous examination of all the known eligible sites. Within a month after the death of Dr. Rush, Henry J. Williams, the executor, consulted eminent counsel as to the obligation of the contract of purchase upon the estate and upon his own duties in making the selection, and was advised by Judge Strong that the purchase was binding, that his power of selection was absolute, and was to be exercised upon his own judgment.

Dr. Rush died on the 26th of May, 1869. Mr. Williams made the selection under the will, and communicated it to the library company on the 29th of June, 1869, having previously stated it to individual members. Mr. Williams, the executor, a member himself of the library company, having no selfish or hostile interest, an old and skilful lawyer, well informed of his duties, a gentleman of intelligence and refinement, one whose integrity and purity of character are conceded by the plaintiffs to the fullest extent, is admitted to have acted in perfect good faith, and he, on his oath, attests that he acted upon his own judgment. It is alleged that the selection of the site at Broad and Christian streets, chosen and purchased by the testator, and adopted by the executor, must be set aside, not because of any intent to disappoint the trust, or of the slightest *mala fides*, but because the mind of the trustee, was, by reason of a promise to the testator, under a constraint, of which he was unconscious, when he made the selection, which made him incapable of exercising his judgment, notwithstanding he swears that he did act upon his own judgment, and because it accorded with his promise. The proposition, instead of being so plain and clearly established that a court of equity can act upon it to set aside the testator's choice and oust his trustee, is simply incredible, and is destructive of the right of private property. It denies the power of self-knowledge and the capability of self-examination, upon which the doctrine of accountability for the thoughts and purposes of the heart rests. It asserts a want of power to introspect our consciousness and motives of action under the responsibility of an oath, and our ability to distinguish between the obligation of a promise and the determination of the judgment in doing an act of importance pondered for weeks. The case is brought directly to this point, for the positive, distinct and reiterated assertions of Mr. Williams, in his answer and his testimony, that he did act upon his own judgment, compel us to decide either that he does not know the operations of his own mind, or that he is foresworn. The latter alternative is conceded on all hands to be untrue. Can it be possible that a court, in such a case and on such ground, will depose the executor, cast the property purchased by the testator back upon the estate, wrest the power from his hands, and place it in the hands of others? There is no such case to be found in the books here or elsewhere; and if any can be found abroad, it cannot be imported into this free State. Before examining the law let me state the bearing of the facts.

Was the selection in the line of Dr. Rush's written will? The will is dated in 1860. Dr. Rush devises to Mr. Williams all his estate, in trust, to select a lot not less than 150 feet square, between Fourth and Fifteenth, and Spruce and Race streets; and to erect a fire-proof building sufficiently large, not only for the present wants of the library company; but for future extension, according to his own

plans and directions; and if he should have none, then according to Dr. Williams' best judgment and to the views he had confessed to him.

Thus, by the terms of the will, the testator reserved to himself the right to leave written instructions; and if he did not, that the executor should act upon his *verbal* directions. His verbal instructions to his executor are therefore within the very line of the written will. It is a matter of history that the war of the rebellion changed the whole surface of affairs in this city as well as elsewhere, by the inflation of the currency, the rise of prices, and increase of business.

These had a strong influence on Dr. Rush's mind. Let the language of the first codicil express his own thought. Paragraph 26—"Events and circumstances occurring within the last six years have obliged me to make several changes in my will." Then he proceeds to state the risk of making a new will, lest his death within thirty days afterwards might void it. "To void the possibility of such a result (he proceeds), I must let it stand as it is, and add other provisions as they may occur to me."

The codicil is dated May 16th, 1866. No better exposition of the testator's thoughts can be made than thus given to us in his own words, to exhibit the state of his mind when he made the second codicil, of the 18th of April, 1867. Remembering this, the testator's change of views since 1860, when the original will was made, is clearly expressed in the language of the second codicil.

SECT. 2. "I have in my will *limited the* extent of the lot to be purchased for the library building, as *well as its localities;* but as I desire that it shall have not only strength, durability and accommodation, but also be of *sufficient magnitude for any future or contingent*, but not ambitious or competing increase of the library, *in order to prevent*, if possible, it being torn down in twenty years, *and the lot sold at a speculative profit to suit the hyperbole of the times.* I authorize and allow my executor under a broad and thoughtful foresight to *increase the size of the lot*, and select *any* situation *he may deem* most expedient, *without regard to any* provisions of my will or codicils." I have italicized the language to bring out its meaning.

Now what was the testator's own idea as contained in this very provision (the power in question) of a *broad and thoughtful foresight?*

He tells us himself to *increase the size of the lot*, and to go out of the original limit to select *anywhere.* In a broad and thoughtful foresight he foresaw that the centre of the city would not suit his purpose or his means. He said to his executor, go out and choose elsewhere, so that the magnitude of the building will suit all future time, and that the edifice itself shall not be swept away by the irresistible tide of speculation, to suit, as he termed it, the hyperbole of the times; a figure to express the superalative fancy and spirit of an inordinate inflation of prices.

In the next place, did the testator follow the line of his own thought, as expressed in the will itself? The proof of this is very clear, and is not contradicted. He made inquiries for eligible lots—new examinations made were both within the original limits and without. Mr. Williams himself explored, but found nothing suited to Dr. Rush's purpose. Finally, the lot at Broad and Christian streets presented itself, and here the testator found a site suited to his thought—a large, open square, on the main great avenue of the city, 299½ feet on Broad street, and running back 527 feet on Christian; containabout three acres and a half; at a price of $130,000—a large sum, indeed, but still leaving enough, as he believed, to put up the extensive building which filled his thought, as expressed in the codicil itself. In view of the rapid extension of the city within the last thirteen years, what right

have we to say this selection was not made under a broad and thoughtful foresight, and does not meet the views and purposes expressed in the written will and codicils? The views and wishes of the library committee are outside of the true question, which must be decided upon the will itself.

Next, what were the grounds on which Mr. Williams exercised his discretion. These are best stated in his own words in his answer and sworn testimony.

"I have chosen this site for these, among other reasons:

"1. It is on the finest street of our city.

"2. It is, so far as I know, the only lot on that street sufficiently large for the building I must erect, which I can obtain at a reasonable cost.

"3. If compelled to purchase a lot elsewhere, I will not be able to erect the building ordered by the testator.

"4. I know of no suitable lot on any other street which can be had at the same cost.

"5. It is but a little distance from the centre of the city, and is within easy reach, by car, of all portions of it.

"6. It will not be necessary to have the library building torn down in twenty years, and the lot sold because of its limited dimensions.

"7. Its size insures for all time light, air, retirement, quiet, and safety from external dangers.

"8. It already belongs to the estate.

"9. It is exactly suited to the kind of library Dr. Rush proposed to endow—not a reading-room, nor one containing the light and ephemeral literature of the day, but one for readers and students of a higher grade.

"10. It will carry out the cardinal intent of the testator, as he understood it, because it is the one he selected himself.

"I adhere to this choice and to my determination to build thereon, notwithstanding the opposition which has been raised, because it was to my judgment, and not that of others, Dr. Rush confided the performance of his testamentary dispositions."

Certainly these are good reasons, and aside from all other evidence, vindicate Mr. Williams' assertion that he acted on his own judgment, for they are processes of thought, or steps which lead to his conclusion. Now, let us see what he says on oath as to the exercise of his own judgment; and first in his answer in direct response to the bill: "I selected the Broad and Christian street lot when I had assumed the executorship, after calm, careful and deliberate consideration, having thought of it in every shape, favorable and unfavorable, in which it had been presented, because it was in my judgment, the best I could obtain for the object and purposes of Dr. Rush's will, and because it combined adequate dimensions with cheapness and position." In regard to his promise to Dr. Rush—the alleged ground of disqualification—after stating his efforts to find a suitable lot, he says: "It was after this that the promise stated in my letter of the 30th December, 1870, was made to him. This was given with a knowledge of almost every circumstance which lead subsequently to my decision, when, as his executor, it became my duty to determine the site of the library." Again: "I aver that at the time I made said promise I thought it the best lot for the purpose which could be obtained, and I aver that after careful reflection and subsequent examination I still entertain this opinion." There is much more in the answer to the same effect.

His testimony is given as strong as his answer. When asked whether his judgment was not influenced by his promise, he replied: "Not that I am conscious of at all. I believe if I had made no promise, and had not known the wishes of Dr. Rush, my judgment would have been the same." Again he said: "If my promise to Dr. Rush, and my oath as executor had been at all in conflict, I would have resigned my executorship at once, and left some

other person to put up the building."

Much more he said to the point, but this will suffice to know the strong and positive convictions of his mind. In these assertions he is also strongly corroborated by the testimony of many witnesses as to what took place just before Dr. Rush's death, and the communication of the selection of the lot to Mr. Wharton, Mr. Biddle and others. He consulted counsel, as proved by Judge Strong's letter of the 15th of June, 1869, before the meeting of the library company, on the 29th of June, when his selection was formally made known. A committee of conference was appointed at this meeting. To Mr. Fraley, one of the committee, who suggested other lots, he replied that they had all been examined, and that the prices were so high they did not suit Dr. Rush, and that the lot at Broad and Christian streets had been selected because, in the judgment of both Dr. Rush and *himself*, it combined all the advantages which he wished to secure. He again consulted Judge Strong, who replied July 19th, 1869, saying: "As executor, you are guided by the written will. In the exercise of the discretion reposed in you by that instrument, you may regard Dr. Rush's views and wishes orally expressed; but after all *your* judgment, however it may be made up, must be your guide in matters left to your discretion." Again urged by Mr. Fraley to change the selection on the 6th of August, 1869, he replied: "*I deem* that situation (the Broad and Christian lot) most expedient under all the circumstances of the case, for I *consider* its distance from the centre of the city as far outweighed by its other advantages, and I have the consolation of knowing that this decision is in entire accordance with the wishes of the testator, who selected and purchased this lot for this very purpose in his lifetime." The library company themselves knew he had exercised his own judgment in the matter. A meeting was called for the 19th of October, 1869, to vote on the acceptance or rejection of the provisions of Dr. Rush's will. Committees were raised *pro* and *con* to influence the opinions of the members when the meeting should take place, and circulars were issued.

On one side it was said: "But the executor of Dr. Rush, both from the expressed wishes of the testator during his life, as well as from *his own judgment of the suitableness* of the selected site, is indisposed to change it." The other side said: "The will gives to the executor the *absolute right* to select the location, and to construct the building, and *this discretion has been exercised* by selecting Broad and Christian streets as *the most suitable spot* in the city for the purpose." Against this overwhelming evidence, the positive oath of Mr. Williams, the contemporary circumstances, and the understanding of the library company, how can the conclusion be drawn that Mr. Williams did not exercise his own judgment?

It was after all these things had occurred, and nineteen months after the death of Dr. Rush, the letter of December 30th, 1870, was written, the stronghold and fortress of the plaintiff's bill. The object and purpose of this letter are made obvious by the circumstances which have evoked it. Controversy had arisen, and the library company had made several efforts to induce Mr. Williams to revoke his selection, and finally, at a meeting of the company, on the 10th of December, 1870, resolutions were passed, one of which expressed the "earnest hope and *request* that Mr. Williams would *reconsider* his intention to build on the site chosen." Dr. Willing, Judge Hare and Mr. Lea, were appointed a committee to confer with Mr. Williams, and a correspondence ensued, in which Mr. Williams adhered to his selection. The letter of December 30th, 1870, was then written, at the invitation of Dr. Willing, as a *formal* expression of Mr. Williams' intentions. He restates his convictions, and expresses

his surprise that he should be again asked to change his intentions, and proceeds to defend himself against censure for refusing to change his mind. Then he pleads the sacred character of his promise. He cannot yield his judgment, but pressed hard to do so, he appeals to the well known sensibility of the gentlemen composing the committee, to all honorable engagements, if the case were their own. He repeats, also, what he has always said, that to change would be in opposition to *his own deliberate judgment;* and "*I mean this* (he adds) *in its fullest sense.*" This letter, written at the close of the year 1870, long after the controversy had existed, in defence of his motives and his reputation, evoked by the direct action of the library company, instead of proving that Mr. Williams acted without judgment, and from unconscious restraint, proves the convictions of a mind thoroughly convinced, and a heart that was fixed upon a just purpose. Admit that he was also influenced by his promise to his friend. So he ought to be, when, as he swears, it was an approving judgment. This is a proper influence, and does not show a man void of discretion, and so bound by conscience that his judgment is lost in the obligation of a foolish pledge.

How far, then, will a court of equity go in regarding a promise to a testator, as in fraud of his written will? Here I think the plaintiffs do not discriminate well. That a verbal direction of a testator in conflict with a power contained in his will, cannot alter the written terms of the power, is beyond contradiction, and to this extent this argument may fairly go.

But that a court of equity can pronounce the verbal direction, and, still stronger, the *act* of this testator, in the very line of his own power, and a promise to conform to it, *ipso facto*, a fraud on the power, is contrary to reason and the plainest principles of equity. The reverse is true, for it is the province of equity to follow the mind of the testator. So clear is this principle, that a court of equity will sometimes convert the devisee, even of an absolute estate into a trustee, in order to compel him to perform a solemn promise given to his testator to dispose of the property according to his verbal direction. In doing this the written will is struck down to reach the equity that lies in the verbal direction. Such was the case of Hoge v. Hoge, 1 Watts, 163, where the testator devised an estate to his brother absolutely, under a verbal direction that it should be for the benefit of his illegitimate son. Chief Justice Gibson cites in his opinion a number of cases where the verbal direction was sustained against the text of the will—one, for instance, where a testator having devised his lands to a nephew, desired his heir-at-law not to disturb the nephew in possession of certain lands acquired after the execution of the will, and it was so decreed. Now if a court of equity, to prevent a fraud upon the testator's actual intention, will disregard the written text, how much more consonant to equity is it to regard the solemn act of a testator who has involved his estate in the obligation of a contract in the line of a will, and to carry out its very intent; and how can it regard the promise of the executor to follow the wishes of the testator in this respect, as *ipso facto*, a fraud upon the testator's power.

On what principle of sound reason, conscience, or equity can the selection of this lot by the executor be pronounced a fraud on the power, or a disappointment of the power, or as an undue and improper execution of the purpose of the testator as contained in his written will? How has the promise to the testator vitiated the selection? What provision of the will does it offend? How can we say the selection is not made with a broad and thoughtful foresight? On the contrary, it conforms both to the will and the purpose of the testator. In following the testator's own act of purchase, nothing but the clearest

evidence of incapacity in the testator to select, or of folly in the selection, and of blind and unreasonable obedience in the executor, can set it aside. I am willing to concede the authority of all the cases cited for the plaintiff, including Duke of Portland's case. They may be summed up in a single view—that a chancellor will so control a trustee that he shall not disappoint the true intent and purpose of the donor, as gathered from the instrument containing the power. To execute it otherwise is a fraud on the power. Hence, it is said, "he must execute it *bona fide for the end designed*." It may be a corollary, also, that an innocent motive will not save the exercise of the power, if it violate the true purpose of the trust. Broader than this there can be no conception of chancery power in Pennsylvania, where the citizen is secured by the constitution in his rights of property. When a testator, to fulfil his own purpose, confers an absolute discretion as to his property, it is *his* right to have the boon executed by his own trustees; and no court can without clear and adequate cause displace the trustee without violating the right of property.

This is well expressed in the letter of advice of 15th June, 1869, from Judge Strong, under which Mr. Williams acted. "A court of equity does not interfere with a discretion reposed, except in cases of *clear* abuse, when the court *can* conclude that the donee of a power is *acting in fraud of it*. But when, as in your case, the trustee acts in accordance with his own best judgment, and in so doing, follows the positive directions of his testator, it would be altogether *unprecedented for a court to interfere and substitute* its discretion for that invoked by the will. In this statement he is most distinctly supported by two recent cases decided by this court. Pulpress v. African Church, 12 Wright, 204, and Nagle's Estate, 2 P. F. Smith, 154. To these may be added a few citations from elementary writers. In the recent work of Mr. Perry on Trusts, the modern decisions are brought up. On page 455, section 508, he says, when the discretion to be exercised is a matter of personal judgment—"the trustees alone can exercise these powers, and courts cannot generally interfere to control mere personal judgments in personal matters." For this, numerous cases are cited. Again, on page 457, section 511, —"If the trustees exercise their discretionary power in *good faith*, and without fraud or collusion, the court cannot review or control their discretion." For this, twenty-four cases are cited. "Nor will a bill be entertained to compel the execution of a mere discretionary power." Ibid. Mr. Hill, in his work on Trustees, ed. 1846, p. 482, says, "as a court of equity will not, in general, assume the exercise of a discretionary power vested in trustees, so it will not interfere to control the trustees acting *bona fide* in the exercise of their discretion." He cites many cases for this statement.

In conclusion, there is no ground in fact or in law, on which the prayers of this bill can be supported.

The decree of the Court at Nisi Prius is, therefore, reversed, and the bill is ordered to be dismissed at the cost of the plaintiffs.

READ, C.J., and MERCUR, J., dissenting.

LIST OF MEMBERS OCTOBER, 1869.

A.

Timothy Abbott's Estate
Robert Adams, Jr.
James M. Aertsen
J. Simpson Africa
James Alexander's Estate
George Allen
Dr. Harrison Allen
Louis S. Allen
Amie E. Alsop
American Sunday School Unio
William V. Anderson
A. J. Antelo
Edward Armstrong
Alfred R. Ashton
John Ashhurst
Samuel H. Austin
John M. Atwood
J. Hubley Ashton

B.

Thomas Hewson Bache
Helen R. Bacon
Elizabeth D. Baird
Harriet Baker
John R. Baker
Michael Baker's Estate
J. Dorsay Bald
Cecelia Baldwin
Henry Baldwin, Jr.
Charles N. Bancker's Estate
Andrew C. Barclay's Estate
James J. Barclay
John A. Barclay
John O'C. Barclay
Abraham Barker's Estate
Rev. Albert Barnes
James G. Barnwell
Mrs. J. Rhea Barton
James Bayard
Edward Bedlock
Mrs. Antoinette Bell
Dr. John Bell
Col. S. V. Benet
George S. Bethel
Edward Bettle
Samuel Bettle's Estate
William Bettle
William Bettle, Jr.
Alexander Biddle
Clement Biddle, Jr.
Edward C. Biddle
George W. Biddle
Henry J. Biddle's Estate
Mrs. Mary Biddle
J. Williams Biddle's Estate
James S. Biddle
Jane M. Biddle's Estate
Julia Williams Biddle
Sarah C. Biddle
Thomas A. Biddle
Horace Binney
Horace Binney, Jr.
Samuel Bispham
Samuel A. Bispham
Elizabeth H. Blake
Mrs. Maria E. Blanchard
John D. Bleight
George Blight
Robert Bliss
Board of Trade
John Bohlen
Charles S. Boker
William Boning
Sophia Borie
Charles S. Boutcher
Henry Bower
Samuel Bradford, Trustee
Vincent L. Bradford
William Bradford
Anne H. N. Brewster
Benjamin H. Brewster
Nicholas Brice
Robert Briggs
John H. Brinton
Mary Y. Brinton
John P. Brock

Linda F. Brolasky
Mrs. Elizabeth T. Brooke
Mrs. Fanny E. Brooks
Miss Laura G. Brooks
Frederick Brown's Estate
Moses Brown
Moses Brown
Washington Brown
William Brown's Estate
Joseph D. Browne's Estate
N. B. Browne
Clement A. Buckley
Edward S. Buckley
Henry Budd
Jesse R. Burden
George H. Burgin
Margaret Burleigh
H. N. Burroughs
Alice Burt
Arthur Burt, Jr.
Arthur A. Burt's Estate
Pierce Butler's Estate
Hezekiah Buzby's Estate

C.

Robert Cabeen
Caroline W. Cadbury
George Cadwalader
John Cadwalader
William Cadwalader
William G. Caldcleugh
Alexander Campbell
James Campbell
St. George T. Campbell
S. Wilmer Cannell
William Carman
Mrs. Ellen D. Carpenter
Thomas P. Carpenter
John C. Carpentier
Joseph Carson, M. D.
Robert D. Cary
Robert S. Cassatt
Lewis C. Cassidy
James H. Castle
Emma R. Catherwood
Joseph R. Chandler
N. Chapman's Estate
Edith L. Chase
Charles Chauncey
Elihu Chauncey
Samuel Chew
Cephas G. Child
John Child
Ellen Christian
Samuel J. Christian
Fifth Baptist Church
Christ Church, Germantown
Church of the Covenant
Church of the Messiah
St. James's Church
St. Jude's Church
St. Luke's Church
Union M. E. Church
Eliza Churchman
James L. Claghorn
John W. Claghorn
Ephraim Clark
Julia L. Clark
Robert Case Clark
Harry G. Clay
Joseph A. Clay
Mrs. Clara Cleeman
John Clement
Charles D. Cleveland's Estate
Benjamin Coates
Benjamin H. Coates, M. D.
Travis Cochran
Wm. G. Cochran
Ann C. Coleman
Mary Coles
Jane A. Colhoun
William Colhoun
L. Susan Collet
Frederic Collins
Zaccheus Collins's Estate
Charles H. T. Collis
B. B. Comegys
D. Francis Condie, M. D.
P. S. P. Conner, Adm'r.
Sol. W. Conrad's Estate
John Cooke
Abigail Cooper's Estate
C. Campbell Cooper
Wm. D. Cooper
Alfred Cope
Edwin R. Cope

Francis R. Cope
Herman Cope
Alan W. Corson
M. L. G. Cottringer
Hewlings Cowperthwaite
Joseph Cowperthwaite
Charles S. Coxe
Henry Cramond
Joseph S. Crawley
George L. Crawford
Emlen Cresson
Joseph Cresson, Jr.
John C. Cresson
Sarah E. Cresson
Wm. S. Crother's Estate
Peter Cullen
Mrs. Emily M. Curwin
Ann Jane Cuthbert
Joseph Ogden Cuthbert
Miss Sarah F. Cuyler
Theodore Cuyler

D.

Matilda Dale
George M. Dallas's Estate
Elijah Dallett
Gillies Dallett
Albert F. Damon
Eliza P. Davids
Rebecca Davids
Robert B. Davidson
Hannah M. Davis
Paul A. Davis, Jr.
William M. Davis
Charles P. Dawson
Mordecai L. Dawson
Anna E. Dealy
Dennis F. Dealy
Henry M. Dechert
C. Paul Denckla
Zelie Destouet's Estate
Sarah C. Dewey
Walter B. Dick's Estate
Levi Dickson
Samuel H. Dickson
Thomas J. Diehl
Thomas Dillard
C. E. D'Invilliers
A. J. Dallas Dixon
Joseph A. Donnelly
Benjamin Dorr's Estate
Rev. Jacob M. Douglass
William Duane
Sam'l W. Duffield
Mrs. Fanny H. Dulles
Joseph H. Dulles
James Dundas's Estate
Robley Dunglison's Estate
Thomas Dunlap's Estate
Robert D. Dunning
Rev. Chas. M. Dupuy
Chas. B. Durborrow
Charles Dutilh
Charles A. Duy
Eliza L. Dwight

E.

Henry Earle
William Easby
Fred'k S. Eckard's Estate
James R. Eckard
Jacob R. Eckfeldt
William Elmslie
Alfred L. Elwyn, M. D.
John Elwyn
Edward Ely
Richard E. Ely
William Ely
Albert G. Emerick
George Emlen's, Jr., Estate
William F. Emlen
John Emory
Frank M. Etting
J. Marx Etting
Clara Evans
Ellen Evans
Horace Evans, M. D.
Hannah Evans
Manlius G. Evans
Rowland Evans
Thomas Evans's Estate
Whitton Evens
Adam Everly's Estate
Robert Ewing's Estate

F.

George W. Farnum's Estate
James A. Farnum
John Farnum
James Fassitt's Estate
Charles Ferguson
John K. Findley
Elizabeth R. Fisher
James L. Fisher's Estate
Lamar W. Fisher
Joshua Francis Fisher
Mary P. Fisher
Mary Read Fisher
Alfred W. Fleming
Samuel F. Flood
Elizabeth H. Fobes
Jonathan Foltz, M. D.
Bettie E. Forsyth
Anzonette Poulson Foulke's Est
William Parker Foulke's Estate
George Fox, M. D.
Mary D. Fox
Gilbert R. Fox
Samuel M. Fox
Frederick Fraley
John F. Frazer
Persifor Frazer
W. W. Frazier, Jr.
John E. French
Stephen Fuguet
Stephen O. Fuguet
Wm. H. Fuguet
Alexander Fullerton's Estate
Helen Kate Furness

G.

Emile B. Gardette
Rosa M. Gaston
Alexander G. Gaw
Benjamin Gerhard's Estate
William W. Gerhard, M. D.
John B. Gest
Mrs. Estella L. Geyelen
Charles Gibbons
James Gibson's Estate
Samuel Gibson
Mrs. Elizabeth A. Gill
Robert Gill
Mahlon Gillingham
Charles Gilpin
George Gilpin
Sarah L. Gilpin
Louis Godey
Louis A. Godey
Nathaniel P. Gordon
Frederic Graff
Hyman Gratz's Estate
Louisa Gratz
James R. Greeves
Robert C. Grier
Anne L. Griffith
A. Bates Grubb
Nicholas Guilbert
Constant Guillou
Henry R. Gummey

H.

Isaiah Hacker's Estate
Henry S. Hagert
Jane B. Haines' Estate
John S. Haines
A. Douglass Hall, M. D.
Edward S. Handy
J. Morris Harding
William Harding
Rev. George Emlen Hare
Julian C. Hare
J. I. Clark Hare
Robert Hare's Estate
Charles Harlan's Estate
Susan B. Harper
George W. Harris
William Harris
Joseph Harrison, Jr.
Byerly Hart
Charles H. Hart
Wm. B. Hart's Estate
John J. Hartmann
Edward Hartshorne, M. D.
Lilburn Harwood, Jr.
Jonathan K. Hassinger

Eden Haydock
Isaac Hays, M. D.
Erskine Hazard's Estate
Augustus Heaton
Henry Helmuth's Estate
Mary M. Henry
Morton P. Henry
Samuel B. Henry
Wm. C. Henszey
James Hepburn's Estate
Constantine Hering, M. D.
Frederick Heyer
Francis Heyl
Wm. S. Hilles
Isaac H. Hobbs
Hugh L. Hodge
J. Ledyard Hodge
William Hodgson
William A. Hoffman
Hugh F. Hollingshead's Estate
Mrs. C. N. Hollingsworth
Samuel Hood
Wm. Hooper, M. D.
Lucy H. Hooper
Eliza Hopkins
Francis Hopkinson
Edward Hopper
Rebecca Horner
John W. Hornor, Secretary
S. H. Horstmann
Pennsylvania Hospital
Mrs. Anna G. Hubbell
B. F. Huddy
John W. Huff
Andrew A. Humphrey
Lydia J. Hunn
J. Gibbons Hunt, M. D.
George W. Hunter
Benj. P. Hutchinson
Chas. H. Hutchinson
James H. Hutchinson, M. D.
Margaretta Hutchinson
Pemberton S. Hutchinson
Thomas Hutchinson

I.

Charles Ingersoll
Edward Ingersoll
Joseph R. Ingersoll's Estate

J.

Samuel Jackson, M. D.
Samual Jackson, M. D. (Northu
berland)
Rebecca C. James
Isaiah Jeanes
Jacob Jeanes, M. D.
Mary Jeanes
Alexander C. Jessup
James F. Johnson
Mary R. Johnson
Mrs. Mary W. Johnson
Alex. W. Johnstone's Estate
Benjamin Jones, Jr.
Horatio G. Jones
Joseph Jones
Joseph A. Jones
Samuel W. Jones
Thos. F. Jones
Wm. F. Jones
Francis Jordan
John Jordan, Jr.
Miss Emily Judson
O. A. Judson, M. D.
George M. Justice's Estate

K.

Elisha K. Kane's Estate
Thomas L. Kane
Thomas L. Kane
J. Alfred Kay
Martha J. Keate
Sarah L. Keene's Estate
Mary L. Keim
E. Otis Kendall
Jno. M. Kennedy
Wm. M. Kennedy
Sarah F. Key.
Charles S. Keyser
Grace Kiernan
Edward King
Charles R. King
William Kirk
T. S. Kirkbride, M. D.
William Kirkham
James Kitchen, M. D.

Henry Knauff
Samuel H. Kneass' Estate
Strickland Kneass
Henry Korn
Charles P. Krauth
Lewis Krumbhaar
Hartmann Kuhn, Jr.
Mary Hamilton Kuhn
William Kulp

L.

J. R. Lambdin
John Lambert
Robert H. Lamborn
David Landreth
Chas. K. Landis
C. S. Langstroth
David Lapsley's Estate
Richard Penn Lardner
James Large's Estate
John Large
Robert H. Large
Thomas Latimer
Edward E. Law
Philip H. Law
Anna M. Lea
Isaac Lea
Joseph Lea, Jr.
J. Fisher Leaming
Robert W. Leaming
Stevenson M. Leaming
John L. Le Conte
Lydia Leedom
Wm. R. Lejee
Elizabeth T. Lehman
Samuel M. Leiper's Estate
Charles G. Leland
Nicholas Lennig
Thompson Lennig
James Lesley's, Jr., Estate
Albert S. Letchworth
Richard Levick
David Lewis
Ellis Lewis
G. Albert Lewis
George T. Lewis
John T. Lewis
Joseph S. Lewis
Lawrence Lewis's Estate
Margaretta S. Lewis
Rebecca C. Lewis
Robert M. Lewis, Jr.
Miss Sarah Lewis
Saunders Lewis
Selina Lippincott
John Lisle's Estate
Chas. Willing Littell
S. Littell, Jr.
Wm. Little, Jr.
John Livezey
Gustavus G. Logan
J. Dickinson Logan
Eleanor P. Long
Joshua Longstreth's Estate
Mary E. Longstreth
Morris Longstreth
Wm. W. Longstreth
Elizabeth Ingersoll Lowber
John W. Lowber's Estate
J. L. Ludlow
Mary A. Lynch

Mc.

John McAllister
W. Y. McAllister
James McAlpin
Gen. George A. McCall's Estate
Peter McCall
S. Kingston McCay
Arthur McClellan
Wm. McConnell
Charles McCrea
Dr. James A. McCrea
Archibald McElroy
John G. R. McElroy
Anne M. McEuen's Estate
Thomas McEuen, M. D.
Wm. L. McFaden
Hugh McIlvain
Wm. McIlvaine's Estate
H. Pratt McKean
Munro Mackie, M. D.
Morton McMichael
Chas. T. McMullin
Mrs. Rebecca M. McMurtrie
Richard C. McMurtrie
William L. Mactier

M.

Louis C. Madeira
Robert E. Maguire's Estate
Kate M. Maison
George Manly
Wm. B. Mann
Bennett W. Marcy
Benjamin V. Marsh
Mary Marshall's Estate
Mary Ann Marshall
George Martin, M. D.
John S. Martin
Thos. Maskell's Estate
James S. Mason
Thos. Mason's Estate
Anna E. Massey
Robert V. Massey
Sitgreaves A. Massey
William Massey
Robert C. Matlack
Thos. Matlack
Thos. J. Megear
Chas. D. Meigs's Estate
John F. Meigs, M. D.
Maria Mercer
Wm. M. Meredith
Samuel G. Merrick
H. Messchert
Sarah Mifflin
Sarah L. Mifflin
J. C. Milligan
James T. Mitchell
Mrs. M. A. Mitchell
Sarah M. Mitchell
Anna M. Montgomery
John T. Montgomery
Bloomfield H. Moore
George H. Moore
Louisa C. Morison
Abigail Morris's Estate
Caspar Morris, M. D.
Catharine W. Morris
Ellison P. Morris
George C. Morris, Trustee
Hannah Morris
Henry Morris
Isaac P. Morris
Israel Morris
J. Cheston Morris
John S. Morris's Estate
Mary Ann Cope Morris
Robert Morris, M. D.
Theodore H. Morris
Wm. E. Morris
Samuel G. Morton's Estate
Horace Moses
Joseph Mora Moss

N.

Thomas D. Nancrede
William Neal
Mrs. Louisa Neff
Anne H. Neill
Wm. G. Neilson
Calebina Newbold
Chas. Newbold's Estate
Clement Buckley Newbold
James S. Newbold
John S. Newbold
Mrs. Louisa V. Newlin
Thomas G. Newlin
John B. Newman
Charles Noble, Jr.
Mary E. Noble
Mrs. Agnes C. Norris
Charles Norris
George W. Norris, M. D.
Henry P. Norris
Isaac Norris
Isaac Norris, Jr., M. D.
Samuel Norris
Susan L. Norris
Richard Norris
Rev. W. H. Norris

O.

John M. Ogden
Mrs. M. E. Osbourn
John C. Otto's Estate

P.

Anna Pancoast
Chas. S. Pancoast

John B. Parker
Samuel Parker's Estate
Dillwyn Parrish
Anson V. Parsons
Robert S. Paschall
John Pastorious
C. Stuart Patterson
Robert Patterson
Gen. Robert Patterson
Dr. J. Rodman Paul
Sarah R. Paul
Edward Peace
Francis Pearsall
William Pearsall
William Peirsoll's Estate
Israel Pemberton
Rebecca C. Pemberton
Edward Penington
John Pennington's Estate
Abraham L. Pennock
Caspar W. Pennock
Charles Penrose
David Pepper
Lawrence S. Pepper
Wm. Pepper's Estate
Samuel H. Perkins
John Perot's Estate
Joseph Perot
T. Morris Perot
Hannah M. Peterson
Clement S. Phillips
Henry Phillips, Jr.
Henry M. Phillips
John S. Phillips
Wm. S. Phillips
Philip H. Physick's Estate
Elizabeth H. Pile
Wm. Platt
Sarah F. Pleasants
Rt. Rev. Alonzo Potter's Estate
Charles S. Potter
Jos. K. Potts
Serena M. Potts
Susanna Poulson's Estate
Thos. H. Powers
Thos. H. Powers, Trustee
Henry Preaut
A. M. Prevost's Estate
Eli K. Price
Joseph Price
Richard Price's Estate
Susan W. Price
Wm. S. Price
Wm. Procter, Jr.
Thomas E. Pryor
Hugh A. Pue's Estate
Isaac Pugh

Q.

B. F. Quimby.

R.

Mrs. Elizabeth C. Ralston
Hannah C. Ralston
Robert Ralston's Estate
Josiah Randall's Estate
Edward T. Randolph
Evan Randolph
George Randolph
Jacob Randolph's Estate
Nathaniel Randolph's Estate
Mary Anna Rawle
Wm. Brooke Rawle
Wm. Henry Rawle
George Read
John M. Read
Henry Reed's Estate
Wm. B. Reed
Samuel J. Reeves
Thomas A. Reilly, M. D.
James Reisky
Ellen M. Reynolds
John Rice
Benjamin W. Richards's Estate
Rachel B. Richards
Joseph G. Richardson
George Inman Riché
Jacob Ridgway's Estate
Henry W. Rihl, M. D.
Mrs. J. E. Ringwalt
James M. Robb
Samuel Robb
Edward Roberts
Edward Roberts, Farmer
George H. Roberts
Gainor Roberts

George Roberts's Estate
Hugh Roberts's Estate
Percival Roberts
Sol. W. Roberts
Margaretta Robertson
Chas. W. Robinson
Moncure Robinson
René La Roche
James Duval Rodney
Charles H. Rogers
Eliza Rogers
Fairman Rogers
Eliz. D. Ronckendorf
Mitchell G. Rosengarten
S. G. Rosengarten
Wm. Walter Ross
Wm. H. Ruddiman
John Rugan's Estate
R. Warrington Rulon
Wm. Rumsey, M. D.
Benjamin Rush's Estate
Benjamin Rush
J. W. Ryer's Estate

S.

David Samuel
Sarah Chauncey Savage
Edward S. Sayres
Lewis A. Scott
David Scull
Edward Lawrence Scull
Joseph H. Seaver
Ann Sellers
Anna Sellers
David Sellers
James Sellers
Eliz. F. Sergeant
Ellen Sergeant
Thomas Sergeant
Anna B. Serrill
Joseph Sharp's Estate
Chas. A. Sharpe
Mrs. Esther H. Sharpless
Fanny M. Sharpless
Henry H. G. Sharpless
George Sharswood
Thos. J. Shepherd
James Shields
Wm. J. Shields
Earle Shinn
Samuel R. Shipley
Mrs. Mary Louisa Shippen
Edward Shippen
Samuel L. Shober's Estate
John W. Simes, Jr.
Mathew Simpson, D. D.
Wm. Henry Simpson
Francis Sims, M. D.
Albanus L. Smith
Alex. Hamilton Smith
Alfred Smith
Almira H. Smith
Aubrey H. Smith
Chas. E. Smith
Daniel B. Smith
Elizabeth P. Smith
Francis Gurney Smith
George R. Smith
Hannah W. Smith
Henry H. Smith, M. D.
Isaac R. Smith
James C. Smith
James S. Smith
Jesse E. Smith
John Jay Smith
Joseph P. Smith
Lloyd P. Smith
Mary Smith
Mary R. Smith
Pemberton Smith
Richard Morris Smith
S. Decatur Smith
S. Grant Smith
Uselma C. Smith
Walter B. Smith
Wm. Few Smith
J. Ross Snowden
Chas. G. Sower
Philip F. Snyder
Rev. Henry S. Spackman
Thos. Sparks
Wm. E. Spofford
Harris L. Sproat
Powell Stackhouse
Thos. S. Standbridge
Theodore Starr

Cornelius Stevenson
Eliz. C. Stevenson
Eliz. W. Stevenson
William Stevenson
Thomas Stewardson, Jr.
Ann Stewardson
Henry L. Stewart
Maria Stewart
Chas. J. Stillé
Anthony E. Stocker, M. D.
Rev. Thos. H. Stockton's Estat
Wm. A. Stokes
Sarah Stratton
George Strawbridge's Estate
George M. Stroud
Morris R. Stroud
Wm. D. Stroud
Wm. Struthers
Ann M. Sulger's Estate
Maria E. Swann
Elizabeth Swift
Joseph Swift
Fred'k J. Sylvester

T.

Isabella L. Tatham
Wm. P. Tatham
Eliza Ann Taylor
Franklin Taylor
George L. Taylor
John H. Taylor
S. W. Thackara
Chas. J. Thomas
Eliza H. Thomas
John M. Thomas
Joseph Thomas, M. D.
Reynold Thomas
S. Harvey Thomas
Samuel Thomas, M. D.
Wm. G. Thomas
Harry Thompson
John J. Thompson
George W. Thorn
Wm. W. Thurston
Edward Tilghman's Estate
Susan Price Tilghman
Wm. M. Tilghman
George W. Toland's Estate
Robert Toland's Estate
Charlemagne Tower
Jos. B. Townsend
John B. Trevor's Estate
Samuel F. Troth
Miss Emilie Trotter
Joseph H. Trotter
Joseph C. Turnpenny
Sarah W. Twell's Estate
George F. Tyler

V.

Rev. Peter Van Pelt
Garret Vangelder's Estate
George Vaux
Wm. S. Vaux
Alfred Vezin
Mary C. Volans

W.

Mary Wagner
Samuel Wagner
John Wainwright
J. M. Power Wallace
John W. Wallace
Edward Waln
Jacob S. Waln's Estate
Phebe L. Waln
S. Morris Waln
Wm. Waln's Estate
Ira P. Walraven
Wm. P. Walter
Sarah A. Ward
Elizabeth F. Warder
George A. Warder
Redwood F. Warner
H. R. Warriner
Isaac S. Waterman
Rev. Edward S. Watson
Thos. B. Wattson
William Weir's Estate
Ann L. Wells
Lewis E. Wells
Samuel Welsh

William Welsn
James West
James M. West
Caroline J. Wetherill
George D. Wetherill
Rachel Wetherill
Rachel Wetherill, Trustee
Francis R. Wharton's Estate
Julianna M. Wharton
Hannah M. Wharton
Henry Wharton
Mary C. Wharton
Thos. J. Wharton's Estate
Wm. C. Wharton
Chas. Wheeler's Estate
Enoch Wheeler's Estate
Edward S. Whelen
James N. Whelen
James Whitall
Gerard I. Whitehead
George Whiteley
Wm. E. Whitman
Cadwalader Wickersham
M. S. Wickersham
Alexander Wilcocks
Edmund Wilcox's Estate
Samuel Wilcox
Wm. S. Wilkinson
Anna Maria Williams's Estate
Henry J. Williams
Julia R. Williams's Estate
Jacob T. Williams
John W. Williams
Thos. Williams's Estate
Jesse Williamson's, Jr., Estate
Mary Williamson
Mahlon Williamson
Charles Willing
Edward S. Willing
Edward W. Wilson
John G. Wilson
Joseph L. Wilson
William Wilson's Estate
Henry Winsor
Mrs. Annis L. Wister
Dr. Caspar Wistar's Estate
Chas. J. Wister
Gen. Isaac J. Wistar
John Wister's Estate
Mifflin Wistar
Richard Wistar
William L. Wistar
Wm. Wister
Wm. W. Wister
George Dering Wolff
George W. Wollaston
George Augustus Wood
George B. Wood, M. D.
Horatio C. Wood
Richard D. Wood's Estate
Alfred Woodward, M. D.
John W. Wright
Chas. S. Wurts, M. D.
Wm. Wurts's Estate
Rev. T. W. J. Wylie

Y.

Charles Yard
Pearson Yard
Thos. H. Yardley
B. H. Yarnall, Jr.
Charles Yarnall
Edward Yarnall's Estate
Ellis Yarnall
Joshua Yorke
Alfred F. Young

Z.

Ernest Zantzinger

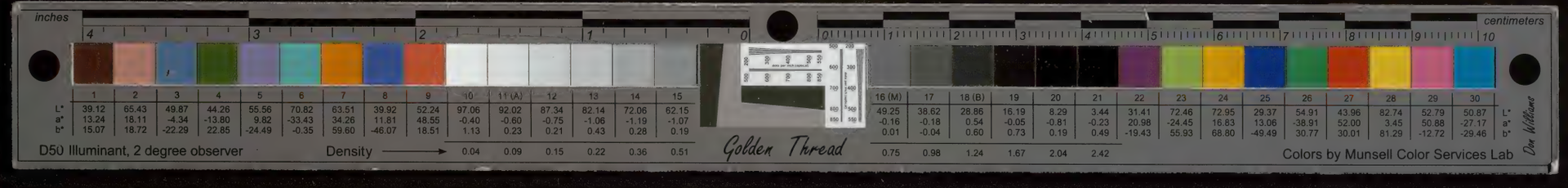
TOTAL—969.

Know all men by these presents, That we, whose names are hereunto set, members of the Library Company of Philadelphia, do hereby constitute and appoint

and of the city of Philadelphia, and each of them, jointly and severally to be our respective attorneys or attorney, proxies or proxy, for us and in our name, to appear at a special meeting of the members of the Library Company, to be held on the 19th day of July, 1872, and then and there to vote in favor of a resolution to authorize the Directors of the said Company to offer for sale and sell to the United States, the lot of ground at the northeast corner of Fifth and Library Streets, in this city, with the Library and other buildings thereon erected, and also all privileges, restrictions, and enactments appurtenant thereto, and to execute the necessary deeds of conveyance; and upon such sale and conveyance to take all proper steps for the temporary removal of the books and other collections of the Company, until some new building shall be erected for their accommodation.

In witness whereof, we have hereto set our hands and seals, respectively.

SEALED AND DELIVERED
IN THE PRESENCE OF



25 = 37.50

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centimeters
D50 Illuminant, 2 degree observer
Density
Golden Thread
Colors by Munsell Color Services Lab
Don Williams

	1	2	3	4	5	6	7	8	9	10	11 (A)	12	13	14	15
L*	39.12	65.43	49.87	44.26	55.56	70.82	63.51	39.92	52.24	97.06	92.02	87.34	82.14	72.06	62.15
a*	13.24	18.11	-4.34	-13.80	9.82	-33.43	34.26	11.81	48.55	-0.40	-0.60	-0.75	-1.06	-1.19	-1.07
b*	15.07	18.72	-22.29	22.85	-24.49	-0.35	59.60	-46.07	18.51	1.13	0.23	0.21	0.43	0.28	0.19

	16 (M)	17	18 (B)	19	20	21	22	23	24	25	26	27	28	29	30	
L*	49.25	38.62	28.86	16.19	8.29	3.44	31.41	72.46	72.95	29.37	54.91	43.96	82.74	52.79	50.87	L*
a*	-0.16	-0.18	0.54	-0.05	-0.81	-0.23	20.98	-24.45	16.83	13.06	-38.91	52.00	3.45	50.88	-27.17	a*
b*	0.01	-0.04	0.60	0.73	0.19	0.49	-19.43	55.93	68.80	-49.49	30.77	30.01	81.29	-12.72	-29.46	b*

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D50 Illuminant, 2 degree observer

Density → 0.04 0.09 0.15 0.22 0.36 0.51 0.75 0.98 1.24 1.67 2.04 2.42

Golden Thread

Colors by Munsell Color Services Lab

Don Williams

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Don Williams

	1	2	3	4	5	6	7	8	9	10	11 (A)	12	13	14	15	16 (M)	17	18 (B)	19	20	21	22	23	24	25	26	27	28	29	30	
L*	39.12	65.43	49.87	44.26	55.56	70.82	63.51	39.92	52.24	97.06	92.02	87.34	82.14	72.06	62.15	49.25	38.62	28.86	16.19	8.29	3.44	31.41	72.46	72.95	29.37	54.91	43.96	82.74	52.79	50.87	L*
a*	13.24	18.11	-4.34	-13.80	9.82	-33.43	34.26	11.81	48.55	-0.40	-0.60	-0.75	-1.06	-1.19	-1.07	-0.16	-0.18	0.54	-0.05	-0.81	-0.23	20.98	-24.45	16.83	13.06	-38.91	52.00	3.45	50.88	-27.17	a*
b*	15.07	18.72	-22.29	22.85	-24.49	-0.35	59.60	-46.07	18.51	1.13	0.23	0.21	0.43	0.28	0.19	0.01	-0.04	0.60	0.73	0.19	0.49	-19.43	55.93	68.80	-49.49	30.77	30.01	81.29	-12.72	-29.46	b*

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a*	-0.16	-0.18	0.54	-0.05	-0.81	-0.23	20.98	-24.45	16.83	13.06	-38.91	52.00	3.45	50.88	-27.17	a*
b*	0.01	-0.04	0.60	0.73	0.19	0.49	-19.43	55.93	68.80	-49.49	30.77	30.01	81.29	-12.72	-29.46	b*

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LIBRARY COMPANY
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